MERCER COUNTY COURT
LAW DIVISION (CRIMINAL)
APP. 19-64 (987)

THE STATE OF NEW JERSEY)
vs.)
LOUIS S. SMITH, HERBERT E. CALLENDER, MARVA L. AMIS, LILY R. LEWIS, WILLIARD D. CRITTENDON, JOYCE L. SCHURIK,)
Defendant-Appellants.)

PARTIAL TRANSCRIPT

BEFORE: HONORABLE J. WILSON NODEN

PLACE: MERCER COUNTY COURTHOUSE
TRENTON, NEW JERSEY

February 8, 1965
February 9, 1965

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APPEARANCES:

VINCENT PANARO, Esquire, Prosecutor of the Pleas of Mercer County, by EDWARD J. PHELAN, Esquire, Assistant Prosecutor of Mercer County, attorneys for the State of New Jersey.

FOX, YANOFF & FOX, Esquires, by DAVID I. FOX, Esquire, attorneys for the Defendant-Appellants.

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February 8, 1965

Morning Session

Time: 9:55 a.m.

(Counsel present.)

(Defendants all present.)

MR. PHELAN: Your Honor, this is the return date of the adjourned matter of State of New Jersey versus Louis S. Smith, Herbert E. Callender, Marva L. Amis, Lily R. Lewis, Williard D. Crittendon, Joyce L. Schurik. This is an appeal which emanates out of the Trenton Municipal Court and it is a de novo hearing at this point.

THE COURT: Mr. Fox, all the people are here?

MR. FOX: Yes, all the defendants are present.

THE COURT: All right.

MR. PHELAN: May we proceed, sir?

THE COURT: Yes.

MR. PHELAN: Mr. Maziarz.

STANLEY H. MAZIARZ,

called as a witness by the State, being

duly sworn, takes the witness stand and testifies as follows:

DIRECT EXAMINATION BY MR. PHELAN:

Q Mr. Maziarz, where do you live?

A At 11 Stacy Avenue, sir.

Q That is Trenton, New Jersey?

A Yes, sir.

Q By whom are you employed?

A City of Trenton.

Q What is your official connection with the City of Trenton?

A City Clerk.

Q For what period of time, sir?

A Since 1952.

Q Now, Mr. Maziarz, as I direct your attention to the evening of November 5th, 1965 -- 1964, did you have occasion to be in the City Council Chamber on that particular evening?

A Yes, sir.

Q And on that particular evening were members of the City Council present?

A Yes, sir.

Q Had any duly constituted meeting been called of the City Council?

A Yes, sir.

Q During the course of that meeting of the City Counsel, do you recall whether or not the occasion presented itself that the members of the Trenton Police Department were called?

A Yes, sir.

Q Could you relate to this Court exactly what transpired on that particular evening?

A About halfway through the meeting, which that evening lasted till about 11:30, this was probably about 9:30, Odell Bradley was -- just approached the microphone in front of the City Council, which is on the floor level.

Q Who approached?

A Odell Bradley.

Q And who is Odell Bradley?

A Odell Bradley was a resident from Lamberton Street and responded to a comment by the President, President Walsh of Council, as to whether any residents of the John Fitch Way Area wished to testify on the piece of legislation that was before City Counsel --

Q Yes, sir.

A -- and as Odell Bradley began to speak, Mrs. Lewis, who had been at the microphone, had just returned to the far end of the council chamber where four or five other people were seated, and it appeared that some conversation, not audible to the podium but loud enough to distract the President who was then presiding, the Council and people in the chamber, in fact Odell Bradley who was speaking had taken place before or among this four or five people.

At that moment President Walsh stated that quiet will have to prevail in the meeting room in order that everyone that wants to be heard on the piece of legislation would be heard, and anyone interrupting the meeting would have to be invited out. At that moment Mr. Callender, who I didn't know at the moment, at that time, but I do know him now --

Q Is he present in the courtroom?

A Yes, he's in the back seat there. He stated, "We haven't started to disrupt your meeting yet." So the President called to Officer Downing to escort the individual out of the meeting room. And Officer Downing walked over to where these five or six people were sitting and appeared like he was speaking to Mr. Callender.

Now, you couldn't hear his conversation, but he left Mr. Callender for a moment or two and started to walk up the chamber towards the door, and at the same time Sergeant McDonough was walking towards Officer Downing and they both went back to the point in seating where the five or six individuals who were grouped together were and spoke to Mr. Callender.

Again the conversation was not audible at the podium. Mr. Callender was still sitting, but he was then sort of sitting in a slouched position, and the four or five people around him started to chant, "Freedom," the word, "Freedom." At the same moment the two officers tried to lift Mr. Callender from the seat, but he certainly wasn't going willingly, and they had a little problem in lifting him because he's a pretty big boy.

As they got him out of the seat he sort of fell to the floor or slid to the floor and just laid there for a moment or two, or maybe ten or fifteen seconds, and then one officer took him by his feet and the other took him by his arms and they sort of half dragged and half carried him out of the meeting chamber and deposited him in the corridor or the entrance into the chamber.

When this happened the four or five people that were with Mr. Callender also walked out and the doors to the chamber were then closed. These doors are never closed, but since the four or five people, or five or six people, then were out there the doors were closed by one of the policemen.

By Mr. Phelan (continuing):

Q Was there any speaking going on at this time?

A Speaking from who?

Q From this group of individuals, Callender and the four or five that followed him.

A Well, as Mr. Callender was being dragged out and the other four or five got up, no, there was no discussion.

They had chanted, "Freedom," I guess four or five times, and they all got up and started to walk out when Callender was being taken out by the police.

Q After --

A (Continuing) When the doors were closed President Walsh started the meeting over again, but I walked over the podium and went up the middle of the chamber and out the door which was closed to the meeting room. And I had difficulty in opening the door, it's a double door, and the reason was that when I walked out I could just about squeeze out the four or five or six people were sitting on the outside of the door, that is, in the corridor on what would be the outside side of the door leads into the chamber.

So I eased my way past the group, went to a telephone which was about sixty feet away from this spot, and I called the First Precinct. I felt this was a little bit unusual for the City Hall. So I felt they should be alerted that there was a little rumpus in the meeting room which was now being taken care of by a couple officers on the outside, but I thought it was prudent to alert them.

The officer thanked me and I walked back to the chamber. I again had difficulty in getting through. In fact normally if you'd walk through a right-hand door that could not be open because the four or five people were around it.

By Mr. Phelan (continuing):

Q Do you know who these four or five people were?

A Yes. I can recognize four or five of them right here in the chamber. Among them was Mr. Callender, Mrs. Lewis, the short girl that's here, Smith and the others. There's one or two others I got to know by seeing them in these chambers since then.

Q Do you recognize them?

A Yeah, I recognize them all.

MR. PHELAN: Could we have Louis S. Smith stand up?

A That's Mrs. Lewis.

MR. PHELAN: Mrs. Smith?

THE WITNESS: Mrs. Lewis.

MR. PHELAN: Mrs. Lewis.

(Defendant, Lily R. Lewis, stands.)

THE COURT: Would you know Mrs. Lewis?

THE WITNESS: Yes.

MR. FOX: Rather than have the defendants stand up, I'd like the witness to identify them in the courtroom.

THE COURT: All right.

MR. FOX: If you'd ask him to identify the witnesses rather than have them identify themselves.

THE COURT: Do you know Mr. Callender?

THE WITNESS: Yes. Mr. Callender is the fellow sitting in the back seat with the jeans on.

MR. PHELAN: Your Honor, may we have the defendants up here at counsel table. I don't know who this gentleman here is.

MR. FOX: The defendants are all in the courtroom.

MR. PHELAN: Who is this gentleman?

MR. FOX: This is Mr. Smith.

MR. PHELAN: Defendant?

MR. FOX: Yes, he's a defendant.

MR. PHELAN: Will you bring the other defendants up here?

MR. FOX: Yes, we can. Where would you like them to be seated?

MR. PHELAN: Put another table there.

(All six defendants take seats at the defense counsel table.)

THE COURT: All right.

By Mr. Phelan (continuing):

Q Mr. Maziarz, I again ask you if you can recognize the individuals who were seated in the circle outside of the council chamber and who were the ones who left with Mr. Callender as you testified?

A Well, Mr. Callender, naturally, is on the attorney's left; Mr. Smith is on his right; Mrs. Lewis is here on the end seat; Miss Schurik is in the second seat; the other two people I would recognize as being among them, too. To remember all these names I don't know all these names, but I remember seeing them.

Q Very well. Would you continue.

A (Continuing) I eased my way back through the left door back into the chamber. As I was walking by I noticed that the two officers were still there. And then our Director of Public Safety McBride was there. So I felt they certainly could handle the matter and went back into the meeting. Since the door was closed behind me, as I walked in I then went to the podium and the meeting was continuing. If I remember correctly, Mr. Bradley was still discussing the matter that was under discussion before City Council.

Q Was that the extent of your participation in this?

A Yes.

MR. PHELAN: Your witness.

THE COURT: All right.

CROSS EXAMINATION BY MR. FOX:

Q Mr. Maziarz, when you were sitting at the podium, did you notice the group who you say were chanting, "Freedom"?

A Yes.

Q Do you remember how many people were in that group?

A The whole group consisted of six. When Mrs. Lewis was at the podium I felt -- first appearance it appeared like there was four or five people. When she returned back there that's where I get the number five or six people.

Q So you remember there were six people who were chanting, "Freedom"?

A No, I don't know how many people were chanting, "Freedom." Some of the people out of that group were chanting, "Freedom."

Q Out of what group?

A Out of the five or six people sitting there.

Q Sitting where?

A Well, as you walk into the chamber on the far right-hand side of the chamber.

Q You say some of the six that were sitting in that area were chanting, "Freedom"?

A Right.

Q That means others of the six were not chanting, "Freedom," doesn't it?

A Well, I don't know how many, whether all six were chanting, or two or three.

Q If you say some were, doesn't that mean some were not; wouldn't you say all were chanting, "Freedom," if you meant all?

A I couldn't tell whether everyone was responding.

Q You don't know how many were chanting, "Freedom," do you?

A I would say some of them were chanting, "Freedom."

Q Some. Do you remember which ones were chanting, "Freedom"?

A Not particularly because it was just coming from that section.

Q So you can't identify specifically who said, "Freedom," and who didn't say, "Freedom," can you, sir?

A Well, at the point of the meeting where I was you'd have to be closer to the people to see whose lips were moving and whose were not.

Q You, yourself, couldn't do that, could you?

A No, I'd say not.

Q Do you remember how many people were sitting in the area in which this group with Mr. Callender was?

A In that immediate area there wasn't any people. This group just seemed to be together.

Q Were there more than six?

A No.

Q The six people you referred to, are these the six people you just identified?

A Yes.

Q These were the only people in that area of the auditorium?

A Within three or four seats of each other, yes.

Q When you say, "three or four seats," can you describe where they were sitting?

A When you enter the City Council Chamber right down the middle is an area about six feet wide, to the left in a semicircle there are a hundred and some seats and to the right, your right as you enter the chamber, there's another hundred and some seats, and they run in a semi-circular way, fashion. The six people I'm referring to sat -- then again the right-hand side is sectioned off into two or three sections of seats. They would be about -- if you took the row of seats at the furthest point of your semi-circle, they would be about eight or nine rows away from that last row of seats and all sat to the rear of the section which probably has about seven or eight rows again of seats.

Q You are talking now as you faced these people from the speaker's platform were they in the left-hand --

A On my left.

Q On your left. On your far left?

A Yes, which would be normally left to the chamber.

Q I take it in the section there is an aisle that runs between that section and another section, is that right?

A Yes.

Q The section you are referring to is that divided any further than by just an aisle -- is there a lane of some kind?

A Yes.

Q Is it one solid section or a division within the section?

A There's a division.

Q What is that like, can you describe that?

A Well, the first section -- the first division that has an aisle would probably have about twenty seats in it, the second division has about twenty or thirty seats, and then a large section would probably have about sixty or seventy seats.

Q And these are one behind the other then.

A Yes.

Q What divides them -- is there an aisle?

A There's aisles between the sections.

Q You are talking now just the left-hand section?

A Right.

Q Two sections of twenty or thirty and another area of about a hundred, is that what you just said?

A About sixty or seventy seats.

Q Where were these six people seated?

A They would be in what I consider the second section, as I describe it.

Q That has a capacity of about thirty seats?

A Thirty, forty seats.

Q I take it none of them were seated in the front row.

A No.

Q About how many aisles back from the front is this second section?

A I think that section would probably have about seven or eight rows.

Q Is that seven or eight rows behind the last row of the front; in other words, how many rows of seats are there in the front of the second section? Do you follow me?

A Front row?

Q In the first section how many aisles are there?

A Both of those sections, I would say, would probably have about seven or eight rows of seats.

Q So the second part in which these people were sitting begins eight rows from the front.

A No. When I say, "section," I am talking about first row to the last row.

THE COURT: Get a blackboard.

MR. PHELAN: Your Honor, I am just wondering if this testimony is material.

THE COURT: I don't know what Mr. Fox -- conceivably it could be.

MR. PHELAN: Why doesn't Mr. Fox bring in the City Engineer?

MR. FOX: I'm just trying to test the recollection of these people, that's all.

THE COURT: All right. Who is most qualified to draw the picture of the chambers?

MR. PHELAN: I believe Mr. Maziarz has been there the longest.

THE WITNESS: Poor artist.

THE COURT: My problem would be not that I don't know what is in there, but putting it on the blackboard is another thing.

MR. FOX: Perhaps I can continue with another line of questioning, sir.

By Mr. Fox (continuing):

Q Mr. Maziarz, when did you first notice this group on the left-hand side of the speaker's platform?

A I noticed that group when Mrs. Lewis was speaking on one or two occasions left the microphone, walked over to the group and came back again to the microphone. My attention was then drawn because it's unusual for a witness to leave the microphone when they're speaking before Council, go back, speak to two or three people, then come back again. But that's what attracted my attention to the group.

Q Were there any unusual sounds coming from this area at that time?

A No. I would say it was a subdued -- whatever the conversation was certainly was not audible on the podium.

Q I take it, then, the conversations then were no louder than conversations elsewhere.

A No, except it was unusual because the meeting stopped and they had to wait until Mrs. Lewis got back and started to speak again, which was somewhat different from the usual pattern.

Q But the conversations you heard at that time, or the sounds audible, they were no more audible than conversations elsewhere in the room?

A I don't know if there was any other conversation in the room.

Q At other times during the evening?

A Even at other times.

Q How long did Mrs. Lewis speak?

A We have a ten-minute limit, but I think she spoke the full ten minutes.

Q Were there speakers before her on this issue?

A Sir?

Q Were there speakers -- there were a few speakers before her on this particular issue, weren't there?

A The issue that she spoke on, yes. I think there was a Mr. Colbert from the National Association for Advancement of Colored People spoke on the matter and then I think she was the next witness.

Q She was the second one to speak on this redevelopment project?

A There was also a Mrs. Graham spoke.

Q You recollect a few others?

A Two or three others, yes.

Q When they spoke these other speakers and Mrs. Lewis, was there any interruption during their speeches because of questions being presented to them by members of the Council?

A No.

Q They spoke right through from beginning to end without interruption?

A Unless there was a question from the President to them as an individual.

Q There might have been questions from the President to them?

A Well, sometimes a person speaking to the microphone will speak in a way where one of the members of Council may have a question to the speaker through the President.

Q That could have happened. There was a dialogue between the President and the speaker?

A It may have happened, yes.

Q Could there have been or were there dialogues between the speaker and members of the public in the chamber?

A No.

Q Were there dialogues between the speaker and members of the Council other than the President?

A Through the President, yes.

Q Through the President. So there were some questions propounded through the President by members of the Council?

A There could have been. I don't recall exactly the conversations.

Q So the speech was interrupted from time to time by questions from the President?

A In a parliamentary way.

Q Did the President handle questions from the floor which he in turn asked of the speakers from the members of the public?

A No. I don't recall there was that trend in that type of meeting at that time.

Q Are you sure; could that happen at all at that meeting, or isn't your recollection clear on that?

A No, the public generally -- there is no discourse between the President and public as such. They must all come to the microphone, identify themselves and then present whatever problem they may have or whatever thoughts they may have.

Q Was there a controversial public issue?

MR. PHELAN: I'll object to that, your Honor. It has no bearing upon this issue whatsoever.

MR. FOX: I'll rephrase that question.

By Mr. Fox (continuing):

Q Were there groups easily identifiable in the audience who were there to be heard on this issue?

MR. PHELAN: I'll object to that, too, your Honor. I don't believe it material or relevant to the issue at hand.

MR. FOX: The relevance of this, this apparently was a public meeting on a controversial issue.

MR. PHELAN: It means nothing, sir.

MR. FOX: We're dealing here with the issue of whether or not certain conduct was audible enough or other conduct was disorderly enough to constitute a violation of two statutes, and it seems to me it is relevant to determine whether or not this conduct which these defendants are charged with was more noisy or more out of line than the conduct that was generally permitted at this meeting. And it is relevant --

THE COURT: Aren't you asking the witness to draw a conclusion?

MR. FOX: No, sir.

THE COURT: I would have difficulty answering myself.

MR. FOX: I'm asking if there were groups easily identifiable.

THE COURT: It seems to me almost everything that comes before City Council these days has people on both sides. Is that what you mean?

MR. FOX: Apparently there were groups with placards in the audience which identified themselves on this, and the reason they had placards was this was an issue of controversy. I think this witness probably recollects that.

THE COURT: Why don't you ask him that?

MR. FOX: I hoped this was the question that asked that.

By Mr. Fox (continuing):

Q Were there groups identifiable?

MR. PHELAN: Your Honor, I think Mr. Fox ought to defer, explain what he means by, "controversy."

MR. FOX: I'll withdraw that question, Mr. Phelan. The question is whether there were groups easily identifiable.

THE COURT: I'll permit the question, if you can answer it.

By Mr. Fox (continuing):

Q That is the question, Mr. Maziarz, were there groups you could identify?

A Well, when you say, "groups identify," I don't think -- try to identify anybody. To me a number of people at a meeting are interested citizens.

Q Weren't there groups there that evening with signs; for instance, didn't one group have a sign of NAACP and other legends?

A Now that you mention it, I think there were some placards at the beginning of the meeting.

Q Do you remember where they were -- were they on the side where these defendants were?

A They were in on what would be my left of the meeting chamber.

Q Was that the section where these defendants were?

A But they were separated, incidentally, by that aisle that runs up.

Q So they were in another section?

A Yes.

Q Were there any other groups with placards?

A Not that I recall.

Q Had these groups presented speakers on this issue?

A Yes.

Q And was there any applause or response from the audience when these people were heard?

A Well, an applause may have taken place.

Q Were there any other sounds other than applause that you remember when this took place?

A Not that they distracted the meeting, if there was any. For that reason I wouldn't say there was any other sounds.

Q When Mr. Callender was removed from the room, did the meeting stop at that time?

A Yes. It wasn't -- all right. I'll just say yes.

Q Did the speaker stop speaking?

A Yes.

Q That was Mr. --

A Bradley.

Q -- Bradley?

A Odell Bradley.

Q How long did he stop speaking?

A Well, from the time the President ordered Mr. Callender removed until the time he was removed,it may have been three or four minutes.

Q Did Mr. Walsh then ask that the meeting be interrupted for a brief period of time after he ordered Mr. Callender removed?

A Well, he didn't ask. It was just a natural thing when a man was being removed and the police were scurrying about the room, you certainly couldn't hold a meeting probably.

Q It was at Mr. Walsh's request that Mr. Callender be removed?

A That's right.

Q When it resumed, I take it Mr. Walsh ordered it be resumed?

A Yes. He invited Mr. Bradley then to proceed.

Q The total interruption was three or four minutes, is that right?

A In the chamber.

Q I'm talking only about the chamber.

A All right.

Q Other than these three or four minutes the meeting proceeded both before and after in a normal fashion?

A Yes, I would say so.

Q Did anyone else other than the two policemen and Mr. Callender leave after Mr. Callender was taken out by the policeman?

A Well, the other four or five people that I referred to left immediately with Mr. Callender.

Q Did any other Negro members in the meeting leave?

A I think one or two of the other boys that were there left.

Q One or two Negroes?

A I think -- Yes.

Q So besides the five Negro members leaving, you only noticed two others left?

A Yes. There wasn't any general uproar. By, "uproar," I mean any general uprising of fifteen or twenty people leaving, no.

Q Did you notice where Mr. Callender was placed by the police outside?

A Before the door was closed it appeared to me, and anybody that was looking out there, that he was just placed in a corridor.

Q Was he placed against a wall out there?

A I would say it would be like if you walked out to the corridor, out this door, he would be perhaps to the left of the door.

Q Was he against the door?

A Whether they propped him against the door or put him down in the middle of the corridor, I don't know.

Q I take it you don't remember where he was. Did you see where he was placed?

A As the police took him out they sort of released him to the floor which was beyond the door in a section of the corridor that's probably about ten feet wide and about fourteen feet long.

Q Then this section where the doors are is about ten feet wide or about ten feet wide in all?

A About fourteen feet long and ten feet wide.

Q How wide are the doors, approximately?

A The double doors are approximately about five feet.

Q They take up about half of the width of the corridor then.

A Well, no, because, you see, there's -- if the corridor is ten feet, yeah, about half of the width would be the doors.

Q Each door or both doors?

A Both doors.

Q So there is a small area beyond the doors where there is a wall --

A Yes.

Q -- to make up the rest of the ten feet. You don't remember where Mr. Callender was put down or you didn't view it?

A He was put what I would say outside of the doors, you know, outside the line of the doors.

Q And Mr. Walsh asked that he be removed from the room, didn't he?

A That's right.

Q After he was put down, did you observe the other defendants and others who went out to him?

A Well, the door was first closed.

Q It was closed before they went out?

A No. After this Mr. Callender was taken out and four or five people went out the door was then closed.

Q Well, you didn't see what they did when they went out from where you were?

A Only when I went through the door.

Q You didn't see it before that?

A No.

Q After they went out the door was closed. Did you notice who closed the door?

A I assume one of the policemen because it was disrupting the meeting and interfering with the meeting if they continued to leave them open.

Q How long did it take to close it -- did you notice anything unusual about closing the door then?

A It is unusual to close the door in the chambers.

Q Other than the fact it is usually open, the policeman the way he closed it, was it in an unusual manner?

A No.

Q It was not unusual?

A I wouldn't say it was unusual, no.

Q So he closed it as he would normally close it, he wasn't interrupted?

A No.

MR. PHELAN: I'll object to the leading form of the questions.

MR. FOX: It is cross-examination, sir.

THE COURT: Would you ask the question again.

What was that last question?

(The pertinent question read by the Reporter.)

A Yes. I would say yes to that.

Q Did anybody else go out those doors before you did at that time?

A I wouldn't want to say yes or no because I didn't particularly notice.

Q On the other hand, you didn't notice anybody who had any particular problems in getting out those doors before you did, did you?

A Well, most people who were at that meeting stayed and probably had no reason to go out those doors at the moment.

Q You didn't notice anybody try to go out say they couldn't get out, did you?

A If they had the same experience I did they would have been able to get out.

Q I am asking what you observed. Did anybody complain to you he wanted to get out and couldn't get out at that time?

A He wouldn't complain to me.

Q Did he complain to anybody you know of?

A I don't know.

Q That means you don't remember there were any complaints?

MR. PHELAN: I'll object to that, your Honor. Now, he's starting to draw conclusions again.

The man has answered the question, Mr. Fox. He says, "I don't know."

MR. FOX: I'm not clear what he means. I simply asked him does he remember if there were any complaints or not.

MR. PHELAN: He said there were no complaints registered to him. Can that be more specific?

MR. FOX: All right. If that's his answer, that's his answer.

By Mr. Fox (continuing):

Q Now, when you went out the door, sir, which one of those two doors did you use?

A What would be normally the right-hand door.

Q The right as you face the back of the council room?

A As you come up the aisle.

Q Your right. I'm sorry. Go ahead.

A As you come up the aisle the door that would be normally on the right-hand side is the door I wanted to go out through.

Q Did you try the other door?

A Well, you wouldn't do that. A wide door like this you should only go out through the one side. You wouldn't use the both doors to go out.

Q Did you have difficulty getting out that right-hand side?

A Yes. The door didn't open.

Q If you had difficulty there why didn't you try the other side?

A Well, I was able to open that door enough on the right side. As I looked through the opening there was people sitting against the other door, so I couldn't possibly open that one.

Q You mean people had their backs or feet, or some other parts of their body, next to the door on the left-hand side?

A Well, as I eased my way through that opening, they were in a circular position. There was about six people in a circle.

Q In front of which door, sir?

A In front of both doors, but mostly on the left of those two doors. The right door with difficulty could be pushed or about three or four -- well, no, about six or seven inches where you could squeeze through.

Q Do you remember who those people were?

A The same people that walked out with Mr. Callender and Mr. Callender also.

Q You say they were sitting in a circle, who were the people closest to the door; do you remember?

A I don't know which of the six were closest to the door.

Q How many people were close to the door and blocking it?

A Well, in a circle of that type you'd probably find about two or three people would be on one side of the circle and the other two or three making up the other half of the circle.

Q A complete circle, it wasn't oblong or anything?

A It was in a circular position, yes.

Q Were the three people next to each other?

A Yeah.

Q If they were in a circle perhaps you can explain to me -- Were they all equally distant from the door, these three people?

A Well, in a circle you will find -- well, actually it would be about two of them could have been in the closest position and the other two would certainly be moving out and the other two in the farther section or farther end of the circle.

→ Q Wouldn't it be true just two people were blocking the door as you observed it?

MR. PHELAN: I'll object to that, your Honor. Again he's leading.

THE COURT: I'll permit it.

MR. FOX: This is cross-examination.

MR. PHELAN: I know, but you don't have to lead.

THE COURT: Go ahead.

A I would say in a group like that they were all blocking the door. Whether one or two were really on the door and the other two were removed, it was a general blockage of the door by the six people.

Q Even the man on the far end of the circle, he was blocking the door, too?

A Well, he must be. He's part of the group. How are you going to open the door even if two of them are there?

Q I want to know --

THE COURT: Now, we're arguing.

MR. FOX: All right.

THE COURT: The purpose is to get the facts from him as he knows them for my benefit.

By Mr. Fox (continuing):

Q Which of the people came in contact with the door?

A I don't know which two because I didn't stop to discuss anything with anybody there. I just glanced at the situation, walked by them and went out the corridor.

Q How long did it take you to get out that door, sir?

A Well, I wouldn't want to tell you it took me a half-hour. I'd say only a minute, maybe less.

Q And how long were you away from the meeting room making your call?

A About three or four minutes.

Q When you came back were those people in the same position they were in before?

A Yes.

Q They were. Did you have some trouble getting in again?

A Normally I would come back on what would be the right side of the door, but I couldn't possibly get near that because again the group was in the general area of this door. So I eased back through the left side, which was my right side of the door when I was going out. Coming back --

Q The same door?

A Same door, that's right.

Q Why didn't you use the other door?

A I couldn't get to it.

Q Was it blocked completely then by people?

A Yes.

Q Did you have to step over anybody to get through?

A No, I walked around.

Q There was a space between these people and door if you walked around?

A With difficulty you could negotiate it, yeah.

Q Who else was out there; do you remember?

A I remember the two officers and Lieutenant -- not Lieutenant, but Director of Public Safety McBride. Now, whether there was any other people there I wouldn't venture.

Q There is a piece of paper over there, Mr. Maziarz, I believe, with colored crayon or pencil right underneath it. Would you draw a diagram of where these people were in relation to the doors on the outside.

(The witness commences to comply with request.)

A Let's say this is the chamber and here are the doors (indicating). Then you have an aisle that goes down like this and you have your podium, one level podium here, and then behind that you will have the City Council podium where there's seven councilmen. The Clerk is on this lower podium, the City Attorney and the stenographers are here (drawing). Then you have -- well, you have your seats. The seats, they run in a semi-circle. They sort of start like this (indicating), this way, and you probably have one section of seats here and there's another section of seats here (indicating), then you have this section of seats here making up these (indicating). They sort of go in rows like this (drawing). Of course this row has the deepest amount of seats, this one has less and this one has still less (indicating).

The group was in this section. Let's say this is Section 1, this was Section 2, and this would be Section 3. This is an aisle and this would be an aisle (indicating). Of course they're pretty wide aisles. And the five or six people that I referred to were in this section, in the back seats, last two rows.

By Mr. Fox (continuing):

Q Wouldn't No. 1, as you have numbered it, be the far left?

A Yes. This is the small section of seats all the way over.

Q They weren't there then.

A They were in what I would consider the second section.

Q In the back of the second section?

A Right.

Q You say all the defendants who are here seated, as you identified them previously, were in the back of that second section?

A Yes.

Q Were they in the back row; do you remember?

A I don't think they were all in that one row because I doubt there are six seats across there. I think they were in what would be the last and next to the last row of that section.

Q They were in the two back rows of that middle section on the far left?

A Yes, that's what it appeared like to me.

Q Where was Mr. Callender?

A If I remember Callender, I think he was on the end seat here (indicating).

Q Do you remember specifically where the others were in those two rows?

A No, not in relation to the individuals.

Q Then at the time you couldn't really identify these people, could you?

A I never knew these people before that except Mrs. Lewis.

Q The only identification you make, then, is your recollection as you see them here today and your recollection of the faces then as they sat in that particular spot, is that so?

A I don't know of any other way of doing it, sir.

Q You do remember these people seated here this morning were the two people in the two back rows of that section -- sorry, were the people seated in the two back rows of that section?

A Yes.

Q Were there any other people in the back rows of that section?

A No, no.

Q Was there anybody in the very first row?

A You mean here (indicating)?

Q No, in the first row of the first section of that left-hand side.

A Here (indicating)?

Q I'm sorry. I am speaking only about which you labled No. 2. Was there anybody in the first row of No. 2?

A There may have been. I think there was because there was quite a large collection of people in here and there was some people in here (indicating), and there was again a few sprinklingsof people in this section.

Q About how many people were in the entire meeting room?

A There was 102 or 105 people attended that meeting.

Q Do you remember how many of those were in that entire Section 2?

A In this section here (indicating)?

Q No. 2.

A They were about evenly split in the chamber. In other words, I would say in this section if there was a hundred and some people attending that meeting, fifty or sixty were here and then forty or fifty could have been on the other side of the meeting chamber.

Q I guess about twelve or thirteen in No. 2, is that right?

A Could have been.

Q Did you notice any of these defendants here today chanting, "Freedom; freedom"?

A The chant of, "Freedom," came right from this section here (indicating).

Q Do you remember which of the defendants did make that chant?

A No. I think I told you before I wouldn't want to say which of the two or three or six. I don't know how many of them were chanting.

Q You don't know specifically who did the chanting?

A No.

Q Did Mr. Callender chant; do you know that?

A I don't know, sir.

Q About how loud was that chanting -- was it above the level of my voice now?

A Oh, yes.

Q A shout?

A No, a good singing voice type of freedom.

Q At the time of the chanting the speaker stopped speaking anyway while Mr. Callender was being removed?

A No. When you say he stopped speaking, when the President asked Mr. -- asked the officer to remove the individual the meeting was normally suspended for those few minutes.

Q So at the time of this chanting the meeting was suspended, isn't that so?

A If I recall, Mr. Bradley tried to continue because I think the President didn't want to call too much attention to the situation. And at that moment Officer Downing was speaking to Mr. Callender, but any conversation that they had was not audible at the podium, and almost immediately with that the chant of, "Freedom," echoed through the chamber.

Q Mr. Maziarz, at the time of the chant Mr. Bradley had stopped speaking, hadn't he?

A Well, Counselor, how can you speak through a microphone when people are chanting, "Freedom"?

THE COURT: If you don't know the question just say, "I don't know."

A (Continuing) At that moment I would say he was not speaking.

Q Hadn't he stopped speaking after Mr. Walsh asked that Mr. Callender be removed?

A For a moment or two he tried to continue.

Q But he stopped, didn't he; after he tried to continue he stopped, didn't he?

A Yes, he stopped.

Q Didn't he stop before the chant of, "Freedom," started?

A I don't know exactly what the moment of stopping and starting was in connection with what was taking place.

Q I direct your attention once again to that diagram. Would you put down there six numbers in the positions in which you say these defendants outside -- these defendants were outside those doors.

A You mean out here (indicating)?

Q Out there, that's right.

A It appeared to me like this (drawing on diagram).

Q That is not drawn to scale, or is it?

A No.

MR. PHELAN: Your Honor, I think we're getting a little bit ridiculous.

Are you going to make a mockery of this court, Mr. Fox?

MR. FOX: No, sir. I don't intend to make a mockery of any courtroom.

MR. PHELAN: You know it is not drawn to scale.

MR. FOX: I certainly don't know that. I asked this man to draw a picture of where these defendants are. I asked he draw them in relation to the doors.

By Mr. Fox (continuing):

Q When I say scale, sir, I mean are these six circles that you drew in the general spots where these defendants were sitting in relation to the doors?

A Yes.

Q I take it only two of them were next to the doors.

A I think I testified in the circle you could only get two in the far end.

Q Do you remember which two those were?

A No.

Q When you came back, weren't they in the same position?

A I would say they hadn't moved any.

Q So there was one person in front of each door, isn't that right?

A I don't know how else you can make a circle.

Q Were they noisy out there -- did they speak?

A There was conversation between them and the officer. Now, what it was I don't know. I didn't stop to converse, to find out, to listen.

Q Could you hear any conversations from outside there while you were inside?

A Once the doors were closed?

Q That's right.

A No.

Q Now, other than sitting down outside were any of these people -- and other than the statement from Mr. Callender inside, were any of these people rowdy?

A I don't know, sir, because once I got back to the chamber I have no idea what took place out there.

Q Just what you observed, sir, not others. Did you observe any of these people to be that way?

A You mean rowdy?

Q Yes.

A Well, the fact they were sitting there was rowdyism enough to me.

Q Did they use profanity or anything like that?

A No, not that I know of.

Q Were they well dressed?

MR. PHELAN: Your Honor, I think

this is completely --

A I don't know --

MR. PHELAN: Wait a minute, Mr. Maziarz.

I'll object to that because it has no relevancy whatsoever. They are charged with being disorderly.

THE COURT: I'll sustain the objection.

MR. PHELAN: Whether they had a full dress suit on --

THE COURT: I just sustained the objection.

MR. PHELAN: Thank you.

By Mr. Fox (continuing):

Q Mr. Maziarz, when you went out in the hall, did you observe anyone other than the two police officers and these six defendants?

A I think there was four or five other people.

Q Were they there when you returned?

A Yes.

Q After Mr. Walsh had asked Mr. Callender to be removed from the meeting room, did the noise level of the public rise at all -- were there conversations?

A No, no. I don't think there was anything there that would have disrupted the meeting. I don't recall there was any.

Q Didn't the people as you saw them murmur one to the other about what was happening -- did they remain silent?

A Amazing thing was there was no reaction that would appear they were upset.

Q They remain absolutely silent then while all this was happening?

A Well, you have the turning around perhaps in the seat.

Q Other than turning around they didn't say anything to each other?

A The people?

Q Yes.

A I don't know if they did. If they did I certainly didn't hear it.

MR. FOX: That's all I have.

MR. PHELAN: That's all, Mr. Maziarz. Thank you.

(The witness leaves the witness stand.)

MR. PHELAN: Mr. Walsh.

FRANK V. WALSH, JR., previously sworn as a witness, resumes the witness stand and testifies as follows:

MR. FOX: Before Mr. Walsh testifies. I take it we know Mr. Walsh testified previously when the defendant, Callender, was absent. I take it his previous testimony will stand as to the other defendants. Is this the procedure?

MR. PHELAN: Absolutely.

MR. FOX: Since his testimony now is only taken for the purpose of Mr. Callender to prevent an infringement on his rights.

THE COURT: This is a new case.

MR. FOX: Starting it again, sir?

THE COURT: Yes.

THE WITNESS: Your Honor, if this is a new case must I be sworn again?

THE COURT: Yes.

FRANK V. WALSH, JR., being duly sworn as a witness, testifies as follows:

DIRECT EXAMINATION BY MR. PHELAN:

Q Where do you live, Mr. Walsh?

A 608 West State Street, Trenton, New Jersey.

Q What is your profession?

A I'm the President of the Trenton Council -- Trenton City Council, Trenton, New Jersey, and I'm an attorney.

Q As President of the City Council, are you in charge with the conduct of the Council when they're in official sessions?

A Yes, sir, I am.

Q And directing your attention to the evening of November the 5th, 1964, did the governing body of the City of Trenton, namely, the City Council, have occasion to be in official session on that particular evening?

A Yes, sir. We meet on the first and third Thursdays of each month.

Q Where do they take place?

A In the City Hall Council Chambers in Trenton.

Q That is located in the City Hall?

A Yes, sir.

Q Now, during the course of this particular public meeting, Mr. Walsh, as President of the City Council, did you have occasion to call upon the services of the members of the Trenton Police Department?

A Yes, sir, I did.

Q Would you describe to this Court the purpose of the necessity for calling upon the police?

A Yes, sir. About approximately a half-hour after the meeting started, which was about eight o'clock, there were -- we were then discussing, I think, two resolutions appropriate to John Fitch Way Area 3. I think one resolution dealt with the authorization of additional funds, as I recall, and another one pertained to the approval of relocation. The relocation proposal as was made up by the Department of Planning and Development.

Normally we don't have a public hearing on resolutions of this nature, but we considered it to be an unusual resolution and a particularly important one to the City of Trenton. We had, I believe it was on this resolution, it had come up a month before and at the request of one of my colleagues we postponed it for one month because he indicated to us that certain aspects of the relocation proposal were challenged by some individuals or organizations in the community without identifying them. And he asked a month be given, delay, for purposes of these objectors to submit their objections in writing. So far as I know they were never submitted.

As I say, about a half-hour after the meeting started, perhaps a little more, I noticed to my left, my far left, mumblings, noise, a distraction which I think was caused by conversation which wasn't discernible to me. I rapped the gavel and asked for order and then somewhat later, a few minutes later, from the same area there was another expression which I heard, but once again I did not hear the particular verbiage. And I looked down in the area where Mr. Callender was sitting and I admonished the individuals in the council chamber and particularly those to my far left, that we had to have order in order to conduct a public meeting.

By Mr. Phelan (continuing):

Q Was it interfering with the meeting?

A Yes, sir, it had been. And I admonished the people in attendance that if there were not silence we would have to ask them to leave or ask them to be removed by the sergeant-at-arms. And as an immediate reply or retort to that statement I was looking over at Mr. Callender, and Mr. Callender said, "We have not begun to interrupt your meeting yet," which I took to be a challenge, a threat, in addition to being a disturbance that more was to come. But I felt --

Q What did you do?

A Then I asked, I believe it was, Officer Downing if he would come down and escort Mr. Callender from the chambers. Officer Downing came over to where Mr. Callender was sitting and mentioned something to him, some conversation, brief, I didn't hear what it was, and I'm trying to get the sequence straight in my mind as much as possible. All of this happened so suddenly, Mr. Phelan, and your Honor, it is kind of hard to keep them straight.

I think at that time Officer Downing went back to Sergeant McDonough and they came over together. I think it was Officer Downing who tried to reach under Mr. Callender's arms to pull him up and he in the meantime locked his arms with the individual sitting next to him.

Q Do you know who they were?

A No, sir, I don't know who they were.

Q Could you identify them?

A I honestly can't, no. I probably wouldn't be able to identify Mr. Callender either, except he has appeared before City Council on several occasions since then without disruption or without any problems at all.

And also at or about this time there was the singing of the expression, "Freedom; freedom." With that Mr. Callender slid down yet further, and Officer Downing and Sergeant McDonough grabbed him by the underarms and by the feet and carried him out. I think the carrying was described as a dragging. I don't remember that. I think he was fairly well carried out and deposited outside of the council chamber doors.

Q What happened after that, sir?

A All during the time this was happening there was a gentleman who was a resident of Fitch Way was talking about the matter of Fitch Way there, was talking about Fitch Way 3 and relocation and his hopes to be able to find equal or better housing for himself and his family. And the carrying out of Mr. Callender I found to be disruptive and certainly was distractive to me and others present.

Q When they were removed from the chamber, do you know where they went?

A Yes, sir. The officers, as best I recall, deposited Mr. Callender outside of the Council doors, and estimating now, three or four feet, two feet perhaps, almost in the center --

Q What was the position of the doors at that time?

A They were wide open as they normally are.

Q What happened to the other remaining group that followed?

A There were, I would have guessed, four or five, but I understand now it was exactly five people got up and left and followed Mr. Callender out. I don't believe, however, they were all seated together. I have the impression this young lady over here, I think it is Miss Schurik, is it, I had the impression she was sitting to my right and not over with the other individuals, and I also thought Mrs. Lewis was sitting off center but to the left.

Now, this is my impression, my recollection. I don't think they were all seated together on the far left, but I think the others, other than the two I mentioned, were sitting with Mr. Callender or in close proximity with him.

And they followed him out and then sat down on the floor in a circular pattern, at least some of them linking their arms together.

Q Could you make an observation of this --

A Yes, sir.

Q -- from your position on the podium?

A Yes, sir. It was a brief one but I noticed it. This was directly in front of me. Then shortly thereafter the doors were closed.

Q That cut off your view, I presume.

A Yes, sir.

MR. PHELAN: Your witness, Mr. Fox.

CROSS EXAMINATION BY MR. FOX:

Q Of course Mr. Callender remained where the policeman placed him when he was taken out.

A So far as I could see, yes, sir.

Q He didn't walk out?

A No, sir.

Q You don't remember, then, that he was up against a wall when he was taken out?

A I don't remember that, no. It doesn't mean he wasn't, but I don't recall seeing that.

Q You are not sure exactly where he was placed?

A My best recollection is it was almost in the middle, maybe slightly to the left of center in the hall, perhaps a couple of feet away from the chamber and away from the doors.

Q You observed the other defendants when they went outside and sat near Mr. Callender, didn't you?

A Yes, sir, I saw them briefly.

Q You said there was a circle that they formed.

A Yes, sir. It may not have been a complete or more perfect circle, but it certainly was a pattern of circular seating.

Q This to the best of your recollection was not against the wall, was it?

A I'd say it was directly in front of the door, as best I recall.

Q After they sat there the doors were closed?

A I would say they were seated somewhere in the vicinity of a minute and the officer tried to close the door. In fact the officer had difficulty, as I recall, closing the doors.

Q He did close them?

A Yes, sir. I don't know which officer, but one of the two.

Q Did you watch him when he closed the doors?

A Sir, I would ask you to forgive me. I'm not trying to be evasive, but all the time this was going on a gentleman that has been identified as Mr. Odell Bradley was at the microphone and I was trying to get Mr. Bradley to speak as loudly and distinctly as he could to minimize the disturbance and the distraction that was caused by Mr. Callender, his being called out. My attention was running between the disturbance itself and Mr. Bradley who was at the microphone. And I'm not trying to equivocate, but I want you to understand to some extent my opportunities to observe were disturbed between the two individuals.

Q So because of that you'd say your observations were limited?

A Not necessarily limited, but certainly brief.

Q I take it your observations were not crystal clear at that time.

A No, sir, they're not.

Q Do you recollect, or not, observing someone close the door?

A Yes, I recollect that. I wouldn't testify to anything that I don't recollect rather clearly.

Q I take it since you recollect rather clearly, what did you observe and what do you recollect when he closed the door?

A I observed he had difficulty. I'm not saying great difficulty, but he may have moved one of the individuals.

Q Did you see him move someone?

A This I do recall, Mr. Fox, that he was unable to swing the door freely. I'm quite certain that I recall that. In other words, he closed perhaps one door and had difficulty closing the other door. Whether he had to actually move the people physically, or ask them to move themselves, I don't know; or whether he was just able to squeeze by them, but there was some difficulty.

Q As best you can recollect, he might have squeezed by?

A Perhaps just brushing against the individual.

Q Just brushing. But during this whole incident or these incidents, the speaker continued to speak, is that right?

A Yes, sir, at my direction and request.

Q There was no interruption then of a few minutes?

A There was a brief interruption. I don't think it was as long -- I don't think the whole episode took four minutes and, of course, I'm not trying to challenge Mr. Maziarz's testimony. My recollection is a little different than his. I don't think it was quite as long as that.

Q I take it the interruption that did take place took place as a result of the removal of Mr. Callender.

A No, sir, I wouldn't say that. I would say it was the result of Mr. Callender's lack of decorum and breach of etiquette and lack of concern for the people of the City of Trenton.

Q The interruption that did take place was the result of the activity of Mr. Callender?

A Yes, sir.

Q You were here when Mr. Maziarz testified?

A Off and on. Not during the whole time, part of the time.

Q Was there any kind of a hubbub in the audience when this took place?

MR. PHELAN: What is a hubbub, your Honor, may we have that?

MR. FOX: I believe Mr. Walsh knew it well enough to answer the question.

THE WITNESS: I could describe what I recall, Mr. Phelan.

MR. PHELAN: I'd just like to know what a hubbub is.

THE COURT: You mean a disturbance.

MR. FOX: Yes, I believe that's what a hubbub is, generally speaking.

A I'm not sure what a hubbub is.

By Mr. Fox (continuing):

Q Let's call it a disturbance. I'll ask a question, rephrase it. After you asked the officer to remove Mr. Callender, what was the reaction of the audience?

A I'd say the major portion of the audience, sir, were in a position to turn towards Mr. Callender and the police officers because there was noise removing him from the seat, and I think the people in the immediate area had some conversation the nature of which I couldn't say, and I do think there was -- I'm pretty sure there was a general murmur in the audience. And I became somewhat apprehensive lest the meeting get out of hand, totally out of hand. This is one of the reasons why I kept asking Mr. Bradley to speak louder, to continue talking. And in a few moments gradually the sound of his voice and things he was talking about were such that people gradually returned their attention to him where it had been focused prior to this incident.

By Mr. Fox (continuing):

Q During this time did any members of the public try to leave?

A Not that I recall other than the defendants here.

Q So the public, other than the disturbance which resulted after Mr. Callender spoke, the public was in no way inconvenienced as you observed?

A Only Mr. Maziarz. I noticed he had difficulty getting out of the door. I didn't notice him having any difficulty getting back, but it was because I wasn't looking at him.

Q No other persons in the meeting?

A Not that I recall.

Q The meeting then continued to conclusion in its normal fashion?

A Yes.

Q There was no interference as a result of the activities that took place outside of the hall?

A Shortly after they closed the door I would say the interference ceased.

Q And the only person who did leave to your recollection, after the defendants left, was Mr. Maziarz?

A So far as I recall, yes, sir.

Q He came back about five minutes later?

A A few minutes later.

Q A few minutes later. Did you notice groups were making placards in the meeting hall?

A Yes, sir.

Q Do you remember where those groups were?

A I'm sure one must have been the NAACP, but I don't recall any others.

Q The only placards you remember were NAACP?

A I heard earlier testimony today. I would say I would suscribe to Mr. Maziarz's recollection that one sign may have had NAACP. Frankly, I couldn't tell you what those signs said.

Q Directing your attention to that diagram, picture, whatever you call that, and to those six circles outside the door, do you remember which one of those was Mr. Callender?

A No, sir, I wouldn't remember.

Q Can you identify any of the defendants in relation --

A No, sir, I'm sorry.

Q -- to the particular circle? But that's accurate except for what you saw?

A Well, except what you mentioned earlier, scale. I wasn't here when Mr. Maziarz drew this. Do these --

MR. PHELAN: There is a pointer there, Mr. Walsh.

A Do these represent the door (indicating)?

Q I believe that's the two doors you are pointing out.

A My impression would be slightly different.

Q Would you draw another diagram.

A Can I put it down here (indicating)?

Q Yes.

A Frankly, Mr. Maziarz was in a better position to observe than I (drawing). If these were the doors, I would have the circle something like this (drawing), something like this. I would say the pattern or circle was slightly either within the size of the doors, the far sides of the doors, or maybe just about even with them. This is the last fleeting view that I had as the doors were being closed.

Q But as far as you know, when the doors were closed they might have just brushed the people nearest them, nearest the doors.

A That's my recollection, sir, because I remember the officer wasn't -- the sweep of the doors wasn't clear. He had to at least exercise caution lest he hit one of the defendants with the door, that may have been the delay, or he may have had to move them.

Q Was this meeting any noisier to your recollection than any other meetings?

A Any what, sir?

Q Noisier?

A No. There are occasions when a speaker, for example, may have something to say, especially take an example of a transfer of a liquor license where the spirit is high, a speaker may make a statement which is either very popular or very unpopular with the people there, and you sometimes get groans. It has been my experience, however, the last two and a half, three years, that strong rap of the gavel that terminates the difficulty and most people were very cooperative. But this wasn't -- I have a feeling that there was a round of applause before this took place, but I'm not sure.

Q Did you remember applause taking place at other times during this meeting?

A I don't remember them, sir, but I certainly wouldn't deny that there may have been. *

Q One more question, sir. As to the diagram outside the hall that you drew, I believe Mr. Maziarz said the hall was approximately ten feet wide, assuming that it is, how many feet did those three people closest to the door take up in the width of the hall?

A I would say those doors, each door is pretty near as wide as the panels in this courtroom, I guess about four, four and a half feet wide each. As I saw the people from where I was sitting, I'd say they covered just about the entire width of the both doors.

Q The three people?

A I would guess there would be three at that point, yes.

MR. FOX: No further questions.

MR. PHELAN: Thank you, Mr. Walsh.

(The witness leaves the witness stand.)

MR. PHELAN: Officer Downing.

MR. WALSH: May I be excused.

THE COURT: It is all right with me. Let's take a five-minute recess.

MR. PHELAN: Break.

(Recess taken at 11:15 a.m.)

- - -

AFTER RECESS

(Counsel present.)

(All defendants present.)

MR. PHELAN: Officer Downing, will you be sworn, please.

ROBERT DOWNING, called as a witness by the State, being duly sworn, takes the witness stand and testifies as follows:

DIRECT EXAMINATION BY MR. PHELAN:

Q Officer, are you a member of the Trenton Police Department?

A Yes, sir, I am.

Q And on November the 5th, 1964, did you have occasion to be on official duty on that particular night?

A Yes, sir, I was.

Q And could you tell me your assignment?

A Well, sir, on this particular night I was assigned to be sergeant-at-arms at this public meeting.

Q What public meeting are you speaking of, sir?

A This was public meeting held at the City Hall pertaining to, I would imagine, John Fitch Way Project 3.

Q Was this when the City Council was in session?

A Yes.

Q On this particular night did you receive any specific instructions from Mr. Walsh, who is the President of the City Council, as to the removal of any individuals?

A Yes, sir. I was -- there was a disturbance and the President, Mr. Walsh, directed me to remove a certain individual from this meeting.

Q Do you know who that individual was?

A At the time I didn't know him, sir, but now I have become familiar with him. His name is --

Q Is he present in this courtroom?

A Yes, he is.

Q Can you point him out, sir?

A This gentleman sitting in the levis, sir, Mr. Callender.

MR. PHELAN: Your Honor, may the record indicate Patrolman Downing pointed and identified Herbert E. Callender.

Q Now, Officer, will you relate to this Court exactly what you did on this particular night?

A Sir, after receiving the instructions from President Walsh, I proceeded to the area where Mr. Callender was seated. I approached him and with a manner as not to distract the meeting any further I whispered to him. I said, "Sir, you have been ordered to leave this meeting. Would you kindly do so." And he looked at me in a denial motion. So I stepped away and I was going to seek information from my sergeant.

Q Who was your sergeant?

A Sergeant McDonough.

Q Did you go to Sergeant McDonough?

A As I started, as I moved away, the sergeant was on his way over to the area. So we came back to Mr. Callender and we both spoke to him in a soft manner. He refused.

Q Did you ask him to leave?

A Yes, sir.

Q He refused?

A Yes, sir.

Q Did he say anything to you?

A Not verbally. But he refused, you know, by his actions, his motions.

Q Could you describe his actions and motions?

A Well, he slouched down in the seat that he was sitting in that manner (illustrating). A party next to him put his arm in between his arm and he just became dead weight when we attempted to move him.

Q Do you know who the party was seated next to him?

A I'm not certain, but I think it was Mr. Crittendon.

Q Is Mr. Crittendon here in court?

A Yes, sir. That's the gentleman with the eyeglasses in the front row.

Q Sitting directly to my left?

A Yes, sir.

MR. PHELAN: Your Honor, may the record indicate Patrolman Downing identifies the defendant, Williard D. Crittendon.

By Mr. Phelan (continuing):

Q And after they locked arms then what happened, Officer?

A Well, at this point the sergeant and I attempted to remove Mr. Crittendon -- Mr. Callender, excuse me, Mr. Callender. I at first tried to pry the gentleman's arm, you know. I didn't do so successfully. So I just forcibly grabbed Mr. Callender under the arms, but he's a very large man so I let that go and I grabbed him by the feet. The sergeant took the upper part of his body and we sort of lifted him over the seats and we continued to half carry and half drag him out of the assembly hall.

Q During this time was there anything said, Officer?

A Well, from the other testimony which I have heard and as far as I can recollect, there was this freedom --

MR. FOX: Objection, sir.

THE COURT: I'll sustain it.

Just what you recall.

Q Just what you do recall.

A I do recall the freedom sounds, yes.

Q Chant. Do you know what Mr. Crittendon was doing at this time?

A Mr. Crittendon? As soon as we started out a group of five people followed us out.

Q Do you know who the five were?

A Yes, sir.

Q Who were they, Officer?

A Well, No. 1, not in that order, but Mr. Crittendon was one, Mr. Smith was one, and the three ladies sitting to my right -- Mrs. Lewis, Mrs. Amis and Mrs. Schurik, I believe her name is, or Miss.

Q They followed you out?

A Yes, sir.

Q Was there any conversation or any remarks between you and the individuals?

A Yes, sir. Well, once out in the corridor the sergeant and I informed these people that they were free to go, there was no charge placed against them and they could leave at their own free will, which they refused.

Q What did they do, if anything?

A They became talkative and talking about different conversation as far as Core matters, racial matters, this project matters and things of that sort.

Q Did they leave?

A No, sir, not of their own free will.

Q What did they do?

A Well, at first they stood around and they positioned themselves on the floor in the corridor.

Q Looking at that diagram that Mr. Maziarz and Mr. Walsh have made marks upon, as meager as it is, do you recognize it?

A Well, I recognize it; yes, I do.

Q And could you tell me the position that these six individuals occupied in the corridor immediately adjacent to the council chamber?

A May I go up?

Q Yes, sir.

(The witness commences to draw.)

A I'll make another drawing (drawing). This would be going out of the assembly room. The doors when they're closed, you know, you would be like this and they would meet in the middle. When we first left the assembly room we placed Mr. Callender. There's a small wall, space in here (drawing). We placed Mr. Callender here and he was in a position where his knees was in a bent position. But then he stretched his legs out, bringing them here or more (indicating), depending upon his height how far. The other persons at first they were standing in a semi-circle here. When we were talking to them they were in this position, then they began to sit down, and as I can recall considered a half moon, a semi-circle going around the doorway (drawing).

By Mr. Phelan (continuing):

Q There is no doubt in your mind that these six individuals did sit upon the floor outside --

A None whatsoever.

MR. FOX: Objection, your Honor, to the leading form of that question.

THE COURT: I'll permit it. Go ahead. He's already answered it.

A No doubt.

Q Do you want to take your seat again, Officer?

(The witness complies.)

Q Do you recall Mr. Maziarz leaving the council chamber?

A Yes, I do recall him leaving.

Q Do you know whether or not he had any difficulty in leaving the chamber?

A Well, sir, I was closest to the doors and I could observe him look out first to see, you know, and the door did open partially and then he did come out. As far as that, I don't know what difficulty he might have.

hs

Q All right. Were there any other people out in the corridor besides the six defendants, you and Sergeant McDonough?

A The Director.

Q Director of who?

A Public Safety.

Q Public Safety. And do you know for what period of time the individuals continued to remain there in the corridor?

A Well, from the time they left until other officers arrived, I would say five to ten minutes.

Q And did they ultimately leave the corridor?

A Not of their own free will.

Q How were they removed?

A Well, when the other officers arrived they were again asked to get up and go. They didn't and they were carried out bodily.

Q All of them?

A Yes, sir.

MR. PHELAN: Your witness, Mr. Fox.

CROSS EXAMINATION BY MR. FOX:

Q I take it, Patrolman Downing, that the positions of these defendants in the hall as you observed them were not the same as they were described by the other witnesses this morning.

A That's correct.

Q Did you place Mr. Callender down against the wall?

A Well, I wouldn't say exactly against the wall. It was somewhere in that immediate area because once outside of the room we just let him go, more or less.

Q Was he near the wall?

A Yes, sir.

Q Something, I take it, like you drew in that diagram?

A Yes.

Q Were any of the others seated next to him?

A Yes. I can't identify which one between Mr. Crittendon or Mr. Smith, but one was sitting beside him.

Q That would be to his left away from the door?

A Right.

Q Was anyone else sitting beside him other than this person who may --

A Beside whom, sir?

Q Beside Mr. Callender and Mr. Crittendon?

A I don't recall, sir.

Q Were the others in front of these two?

A At first, yes. They were in a standing position when they first left the assembly room.

Q When they were standing,did they block the door then?

A To a certain extent, I'd say, yes.

Q Which ones blocked the door?

A I don't recall which.

Q Do you remember who blocked the door when they were sitting?

A Well, Mr. Callender did block the door from his outstretched position.

Q Anybody else?

A I don't recall.

Q So as far as you know only Mr. Callender blocked the door, is that right?

A That I can recall, yes, outside of the diagram. I can't place the people where they were, but I know they were in that position blocking, you know.

Q You only remember Mr. Callender as the one blocking the door?

A I remember Mr. Callender because I put him in an area near the door. The other persons came out and they positioned themselves around the door.

Q Was the man seated next to Mr. Callender blocking the door?

A At first I would say no.

Q Well, did he block the door at any time?

A When they changed position.

Q Where was he before he changed position, this man next to Mr. Callender?

A When we first put Mr. Callender in the corridor this party sat beside him still locking his arms.

Q Beside him, I take it near the wall away from the door?

A Right to Mr. Callender's left.

Q Was he blocking the door then?

A No, sir.

Q Did he block it later?

A He was part of the group, yes.

Q Did he, himself, block it and not the group? This man sitting next to Mr. Callender, did he block the door?

A He was part of the group. I cannot identify the man that was sitting next to Mr. Callender. So I cannot say whether he was the one that blocked the door or whether he didn't block the door. He was in the group that blocked the door.

Q Who in the group did block the door aside from Mr. Callender?

A The five parties blocked the door.

Q All five of them?

A They were in the position there so they might have blocked the door in some form.

Q Mr. Downing, I am asking you not to tell me who might have, but as you observed it who did?

A I can't single the parties out name by name.

Q Were all six people in such a position so that if the door were open their bodies would come into contact with it?

A No; no, sir.

Q They were not?

A It couldn't possibly be.

Q So if the door were open some of them would not be blocking it, is that right?

A True.

Q Do you remember how many would not be blocking it?

A Well, from the diagram you would assume the last two parties of that group wouldn't be blocking the door.

Q Were they seated in the center of the hall?

A I would say yes.

Q Were they seated in front of the door to the right as you leave the chamber?

A I would say the line of their bodies would extend somewhere to the right.

Q There was one man next to Mr. Callender, were there any people in front of these two people, Mr. Callender and the man next to him?

A According to the diagram, yes.

Q How many?

A I have five up there so maybe it was five.

Q Were there seven in this group?

A There was six.

Q Well, if there were two against the wall and you say there were five in front of them, wouldn't that be seven?

A Sir, I stated a party was sitting next to Mr. Callender when we first positioned him in the corridor.

Q At that time who were in front of these two, how many?

A At that particular time there wasn't any in front of him. They were standing more or less --

Q After that when they were all seated, how many were in front of these two?

A I would say five, five of them were.

Q They were in front of who?

A In front of Mr. Callender, period.

Q Just Callender. Wasn't there at that time someone seated next to him?

A Sir, I think I stated Mr. Callender was seated alone after their positions changed. At first there was one gentleman beside Mr. Callender. The positions changed and Mr. Callender was back in that position by himself, the other five parties scattered themselves in the position I tried to diagram on the board.

Q So they were all in front of him after that?

A Yes, sir.

Q And some of them were in fact not in the position where the door would come into contact with them when it was opened?

A Sir, if there's six people and the first one is by the door, if there's five people the fourth or fifth person couldn't be by the door.

Q Did you at any time place any of these people under arrest?

A Me, myself, personally?

Q You, yourself, personally.

A Yes, sir.

Q Which ones?

A All of them.

Q How did you do that?

A When they refused to move they were informed by me verbally that they were being placed under arrest.

Q Did you tell them, "You are under arrest"?

A I made a general statement to these parties.

Q What's that statement, sir?

A I said they were informed, "You're free to leave. If you don't all you will be placed under arrest."

Q When did you say this?

A Approximately a few minutes after they refused to go when they were given the opportunity to leave.

Q Were the doors closed at that time?

A Yes, sir.

Q Were they all seated then?

A Were they all seated when, sir?

Q At the time you said, "If you don't leave you're under arrest" --

A Yes, sir.

Q -- were they seated in the position you positioned them in that diagram?

A Yes, sir.

Q Were they standing when the doors were closed?

A Yes, sir, I believe they were.

Q How many were standing when the doors were closed?

A Four.

Q Do you remember who closed the doors?

A No, sir, I don't.

Q Were you there when they were closed?

A Yes, sir, I was.

Q So two were seated when they closed the doors, is that right?

A Yes, sir.

Q Were you there when Mr. Maziarz tried to get out?

A Yes, sir.

Q Were any of them standing then?

A I don't recall, sir.

Q Then you don't recall whether they were standing or sitting when he tried to get out?

A When Mr. Maziarz tried to leave?

Q That's right.

A I don't recall whether they were standing or sitting.

Q Then you don't recall who, if any, or which, if any, interfered with the opening of the door when Mr. Maziarz tried to get out, do you?

A Would you repeat that again, please.

Q If you don't remember, as you testified, whether or not they were standing or sitting when Mr. Maziarz tried to leave the room, I take it it is true, then, that you don't remember which of these defendants, if any, interfered with his opening the door to leave the council chamber.

A Sir, I don't recall the time element that Mr. Maziarz tried to leave the assembly room. So I would say if he tried to leave after within a period of two or three minutes someone was seated at that position blocking his exit.

Q Do you know who that was?

A It was the members of this here group, sir.

Q Do you know who in the group?

A It was the five parties in that circle, sir.

Q You said someone was sitting, Mr. Downing, didn't you? You said you don't remember, though, who was standing and who was sitting, isn't that right?

A No, sir. I don't believe I said it just that way.

Q What did you say?

A I believe I stated they were, the five parties, the four persons were standing when they first followed us from the assembly room. At a later time they became seated.

Q Do you remember if they were standing or were seated when Mr. Maziarz tried to leave the room?

A The three ladies were seated, I'm pretty sure of that.

Q Who was standing?

A I'm not sure whether Mr. Smith was standing, this gentleman with the gray sweater on, Mr. Smith. I'm not sure whether he was standing or not.

Q How long did it take Mr. Maziarz to get out; do you know?

A Sir, I wasn't paying that much attention to Mr. Maziarz. I had five or six parties there I was about to place under arrest, so Mr. Maziarz was not my concern.

Q Did you notice him leaving?

A Yes, sir.

Q Do you remember the door he used?

A Sir, I stated I wasn't paying that much attention. I know he attempted to leave. Which door he tried to leave out of I cannot honestly say.

Q Did you see anybody else go in or out at that time?

A Yes, sir, I did.

Q Do you know who?

A I noticed persons coming out, yes.

Q Pardon me?

A I noticed persons coming out.

Q What did they do to get out?

A I know they were strangers from the immediate group. They evidently had to try to get out or try to get in.

Q Did anybody open the door for them?

A I don't recall. I wasn't paying that much attention to them.

Q You remember they did get in and out?

A They left the area after I seen them.

Q Did they have any trouble getting in or out?

A I wasn't paying that much attention.

Q Did they have any trouble getting in or out?

A I couldn't say, sir.

Q Did you ask each of these six people to leave?

A Sir, we was talking to them in a group, so if I spoke to one I spoke to six.

Q Did anybody complain to you he couldn't get in or out?

A No, sir.

Q Did these people use any profanity of any kind?

MR. PHELAN: I'll object to that, your Honor. It is not part of the complaint. The complaint speaks for itself.

THE COURT: I'll permit the question.

It was answered before.

A Any profanity towards whom, sir?

Q Anyone.

A I don't recall it being used.

Q Now, other than sitting down outside of the hall and other than the remarks by Mr. Callender inside the hall, did these people act, to your observation, in any way that to your knowledge was unusually noisy or unruly?

A I would say yes.

Q What did they do?

A You mean in the corridor?

Q Either place. Well, let's direct your attention to inside the council chamber. Would you answer the question as to that spot.

A Yes, sir.

Q What?

A Inside the chambers after and during Mrs. Lewis' statement to the Council, there was a little bickering from the groups seated to the right as you would enter this chambers.

Q Was that unruly?

A I would say yes. It was more or less like a cheering gallery. I mean she was given her opportunity to address the Council. She made her statement, but she had some backers. That's the way I observed it.

Q Was it applause?

A There might have been. I can't recall as to whether there was any applause or not.

Q What did they do -- did they shout?

A Well, it's just like if you make a brilliant statement, you know, you're going to get somebody that's going to say, "Yeah, yeah! That's telling them." It was in that nature, sir.

Q They just responded as an audience?

A Yes, sir, backing this particular party.

Q That wasn't unruly, was it?

A I'd say for a meeting, yes.

Q Do you remember who did that?

A Well, it was the members of this group seated in this courtroom now, sir.

Q Any others who did that, just these six?

A I don't recall whether it was, but I know the majority of the cheering came from this group.

Q Did you at that time see the people who did that?

A At a glancing observation of the room. You know how you glance around.

Q Where were you, in the rear of the room?

A I was in the rear, yes.

Q So all you saw were backs of heads?

A No, sir.

Q What else could you see?

A You could see the side of these persons, a side view.

Q You identified them from that view?

A Yes, sir.

Q Was there any response from any other groups when their representative spoke?

MR. PHELAN: I'll object to that, your Honor. I believe it is immaterial. We're concerned with this group.

MR. FOX: I think we are concerned --

THE COURT: I'll permit it. Go ahead.

A I don't recall.

Q They never applauded during that whole meeting when people spoke?

A I do not recall applauding from other groups that someone spoke that they were more or less interested in.

Q There was no applause that whole evening?

THE COURT: He just answered it twice.

Q Did you place Mr. Callender under arrest inside the meeting room?

A No, sir.

Q Do you remember whether or not the man who was speaking at the time Mr. Walsh asked Mr. Callender, do you remember whether or not that man continued to speak?

A Sir, I don't remember. My attention was to Mr. Callender, removing him. What was going on I wasn't concerned about at that time.

Q You don't remember whether or not the meeting continued then as it had in the past?

A Well, right after I was directed to remove this gentleman from the room everything did become quiet. So evidently things must have stopped.

MR. FOX: May I have just a moment, sir?

That's all I have, Mr. Phelan.

MR. PHELAN: Thank you, Officer.

(The witness leaves the witness stand.)

MR. PHELAN: Sergeant McDonough.

JAMES J. McDONOUGH, called as a witness by the State, being duly sworn, takes the witness stand and testifies as follows:

DIRECT EXAMINATION BY MR. PHELAN:

Q Sergeant, are you a member of the Trenton Police Department?

A Yes, sir.

Q And directing your attention to the evening of

November the 5th, 1964, did you have occasion to be on official duty in the City Hall Chamber during the meeting of the City Council in the City of Trenton?

A Yes, sir, I did.

Q And were any other uniformed officers with you at that time?

A Yes, sir. Patrolman Downing.

Q Did you during the course of the evening come to the assistance of Officer Downing in the removal of any individuals from the City Hall Chamber?

A Yes, sir, I did. I came to Patrolman Downing's assistance in removing this gentleman over here, Mr. Callender.

Q And would you describe to the Court exactly what transpired on this particular evening.

A On this evening Patrolman Downing, as you go into the council chambers, was standing to the right, I was on the opposite side of this doorway, and when President Walsh instructed Patrolman Downing to remove Mr. Callender, he started over to where he was sitting and he had said something to him before I arrived where they were seated, and he started back toward the rear of the room and talked to me. So when I got over toward where Mr. Callender was seated, I asked him to leave being that he was ordered to remove himself from this council chambers. He made no effort to move or made no reply. The only thing that was done, he slouched down in his seat like this (illustrating) and the person that was sitting next to him interwove the arms. Again he was asked to leave, and he made no effort or no reply. So then Patrolman Downing and I proceeded to lift him and carry him over the seats and out into the corridor.

By Mr. Phelan (continuing):

Q When you got Callender out into the corridor, what did you then do with him?

A When we got Mr. Callender out into the corridor he was half propped up against the wall in a sitting position. He had his knees partially up in the air, and at this time I went into the Director's office to use the phone after instructing Patrolman Downing that I was going to call for a patrol.

Q And did you summon additonal aid?

A Yes, sir, I did.

Q When you returned after making your telephone call, was Callender still in the corridor?

A He was still in the corridor, but not in the position that he had been placed in by Patrolman Downing and I.

Q What position was he in?

A Whereas he was in a sitting position, I'd say a half sitting position, he had slouched down to practically lying position.

Q And was this near the doors leading to the council chamber?

A Yes, sir, it was.

Q Do you know the position of the doors at this point?

A Well, when we had placed Mr. Callender against the wall the doors were open. When I came out from making a telephone call the doors were being closed.

Q Do you know who closed them?

A No, sir, I don't.

Q Was there anyone else in the corridor besides you, Callender and Officer Downing?

A Yes, sir. When I came out from making this call the rest -- this lady, this lady and this lady and these two gentlemen here were also in the corridor.

Q What position were they occupying in the corridor -- were they standing?

A They were standing at that time, yes, sir.

Q Did they continue to stand?

A No, they did not.

Q Were they asked to leave?

A Yes, they were. They were asked -- I asked them to leave three times.

Q And did you have any reply from them?

A No, sir.

Q You say they were standing when you returned?

A Yes, sir.

Q For what period of time did they continue to stand?

A Well, they were standing there and they were asked to leave, and when they made no move to leave I again went into make a second telephone call.

Q When you returned were they still there?

A Yes, sir, they were still there, but they were not in a standing position.

Q Could you describe their position?

A Yes, sir. The position that Mr. Callender was in the second time when I'd come out when he stretched himself to the floor in a lying position other people had placed themselves on the floor in sort of a semi to nearly a full circle and interwound their arms and legs.

Q Were they saying anything?

A They were carrying on conversation between themselves.

Q Did this position that they occupy, did it interfere with the normal egress and ingress to the council chamber?

A Yes, sir, I would say so.

MR. PHELAN: Your witness, Mr. Fox.

CROSS EXAMINATION BY MR. FOX:

Q Who did it interferewith -- do you remember specifically anybody who tried to get out and couldn't get out?

A No, sir, I don't recall anybody going in or out after I come out.

Q So when you say it interfered, you are speculating in saying it might have interfered, aren't you?

A I would say if anybody had attempted to come in or out they would have had difficulty.

Q But so far as you know, nobody tried to get out who couldn't get out, did he?

A No, sir.

Q Nobody tried to get in who couldn't get in, did he?

A That's right.

Q Where were you when Patrolman Downing asked for you initially, where were you physically standing or sitting?

A Well, Patrolman Downing didn't ask for me. When President Walsh directed him to remove Mr. Callender I immediately started over toward that area.

Q Where had you been just prior to that time, where were you standing in the room?

A Where this door was Patrolman Downing was standing on the right side going in and I was standing on the left.

Q That is in the rear of the room, isn't it?

A Yes, sir.

Q Did you hear Mr. Callender's statements?

A I heard -- I couldn't identify the statement that he made except it sounded as though he said, "You haven't begun to have any trouble as yet." It sounded along those lines.

Q And it was right after that then you began to proceed towards where he was seated?

A Yes, sir.

Q Did you hear anything else?

A Not at that particular time.

Q Then the next thing you did was proceed to him and have him removed from the room?

A Yes, sir.

Q Was anybody seated next to him?

A There was someone sitting on his left.

Q Immediate left?

A Yes, sir.

Q Where was this person when you came up to remove Mr. Callender?

A Are you speaking of Mr. Callender or the person sitting next to him?

Q The person sitting next to him.

A He was sitting in the chair alongside of Mr. Callender.

Q Was he doing anything besides sitting?

A Not when we first approached Mr. Callender. I'd say in a matter of seconds after he had been asked to leave this party interwove his arm with Mr. Callender's.

Q Then what happened right after that, did you grab

Mr. Callender?

A Yes, sir. We proceeded to try and lift Mr. Callender out of his seat and take him out of the council chambers.

Q And I take it you did take him out.

A Yes, we did.

Q And you took him into the hall?

A That's right.

Q And you placed him down near the wall?

A That's right.

Q And then other people came out and stood around, is that right?

A I was not present when other people came out. I had gone into make a telephone call.

Q When you returned were they standing?

A Yes, they were.

Q Were the doors open or closed?

A The doors were in the process of being closed.

Q Some of them were standing at that time, is that right?

A That's right.

Q And some of them were seated. Do you remember how many were seated?

A Mr. Callender, and I wouldn't say Mr. Smith was seated but he may have been in a crouched position alongside of Mr. Callender.

Q Is that where he remained until he was removed? Did Mr. Smith remain in a crouched position next to Mr. Callender until he was removed from that spot by the police?

A No, he did not.

Q How did he change his position?

A His position had also changed to a more outstretched position.

Q Well, was he next to Mr. Callender at that time?

A Yes, he was.

Q Was he against the wall?

A No, he was not.

Q Where were the others; was anybody in front of Smith -- Mr. Smith?

A Well, when I described this group I described it as being a semi-circle to a circle. So that it wasn't a matter of any one person being in front of the other, I would say.

Q You mean they were all side by side?

A No. Side by side they wouldn't be in a circle.

Q Side by side but in a semi-circle?

A Semi-circle to a full circle, yes.

Q Side by side not one behind the other?

A In front of one another, one alongside of another, both positions.

Q I don't understand. If they were in a circle, can you explain some were in front and some were on the side of one another?

A Using Patrolman Downing's diagram here where Mr. Callender was against the wall, Mr. Smith was to his right. And then when I come out of the Director's office using the phone the second time, they were to the right and in front of each other.

Q You mean there was somebody in front of Smith and Callender?

A Yes, sir.

Q Who?

A After they started interlocking arms and legs, I couldn't identify the person in front of them.

Q Was there anybody to their left?

A I'd say not to the immediate left, but as you would be forming a circle there was somebody to his left, yes.

Q How far away from those doors was the man on the extreme outside part of the circle?

A I would say with legs outstretched and everything, maybe five to six feet.

Q How close to the doors was the man nearest to the doors?

A I would say two to three feet.

Q Was anybody in front of that second door on the right?

A Yes, sir.

Q Do you know who that was?

A No, I don't.

Q Do you know specifically who was in front of the door on the left?

A I would say Mr. Callender and Mr. Smith were more.

Q Apart from them, you don't know who was in front of that door?

A No, I do not.

Q Do you remember the speakers, the other speakers than the man who was speaking, do you remember there were other speakers than the man who was speaking when this incident took place?

A There was another gentleman after this lady over here had left her place in front of the microphone, another gentleman got up and started to speak.

Q Was there any audience reaction of any kind to his speech?

A Not that I know of.

Q No applause?

A No applause.

Q Was there applause to any of the other speakers?

A Sir, I was not in the council chambers all during this.

Q Were youthere when Mrs. Lewis spoke?

A Yes, sir, I was.

Q Was there any applause when she spoke?

A I couldn't describe it as applause, but favorable reaction, I would say.

Q Were there any favorable reactions to other speakers?

A Not that I know of.

Q Did you notice any placards for the NAACP or other groups?

A There were placards, sir, but I couldn't describe what they were.

Q Just a few more questions, sir. Was there anybody else in the hall when you -- after you came back and the doors were closed, aside from the six defendants and yourself and the other Patrolman Downing?

A After the doors had been closed, you say?

Q Right. You made a phone call, didn't you?

A Yes, sir.

Q And you came back?

A Right.

Q Who was there then?

A There were other people there. I couldn't tell you who they were.

Q There were other people?

A Yes, sir.

Q Were they policemen?

A Not at that time, no, sir.

Q Did they go back into the meeting room?

A I can't say that they did.

Q You don't remember precisely what directions they took?

A No, sir.

Q You did testify that you asked the people in the hall to leave?

A Yes, sir.

Q When did you do that?

A Oh, after I had made my initial phone call and came out and the other parties were there, I asked them to leave at that time.

Q Do you remember which, if any, of the defendants you asked to leave?

A I didn't ask each and every one specifically. I asked them as a group to leave.

Q Were they standing at that time?

A The first time they were standing.

Q What was it that prompted you to ask them to leave?

A Well, I felt as though we had a situation here that could be better controlled if we had as few people around as possible.

Q What was the situation that you based this on?

A Just as we described, sir. Mr. Callender sitting on the floor, Mr. Smith in a crouched position at that time. This is the situation I described.

Q And this alone is what you based your suggestion or your command that they leave?

A Well, this is the first time. They were again asked when they were in this lying and stretched out position.

Q Did you place them under arrest?

A Yes, sir, they were.

Q When were they removed from the hall, how much passed from the time they originally appeared there and they were removed?

A I would say ten to fifteen minutes before the last party was removed from the corridor.

MR. FOX: No further questions, your Honor.

MR. PHELAN: Thank you, sir.

(The witness leaves the witness stand.)

MR. PHELAN: Sergeant McKeever.

JAMES E. Mc KEEVER, called as a witness by the State, being duly sworn, takes the witness stand and testifies as follows:

DIRECT EXAMINATION BY MR. PHELAN:

Q Sergeant, are you a member of the Trenton Police Department?

A Yes, sir, I am.

Q Directing your attention to the evening of November 5th, 1964, did you have occasion to be on official duty that particular night?

A Yes, I did.

Q And did you have occasion to respond to the municipal building located on East State Street in the City of Trenton?

A Yes, sir, I did.

Q And as a result of your arrival at the City Hall, will you please tell this Court what you observed upon your arrival?

A Upon arrival at second floor level, City Hall, outside of City Council Chambers, which has been described many times here this morning, I observed five people, two men and three women, sitting in a circular or oblong position outside of the doors that led into the council chamber.

Q In a seated position?

A Yes, sir. They were seated some with their legs outstretched, some had their legs interlocked, and all had their arms interlocked one to the other to the person on either their right or their left.

Q You say there were five people?

A There were five, sir.

Q And what did you then do, Sergeant, if anything?

A Well, about that juncture Sergeant McDonough came back up from the first floor level, and I discussed the matter briefly with him and he apprised me that people had been asked to leave and refused to leave. And I went over and spoke to them and I asked them all collectively, first collectively, and I asked each one individually to leave.

Q What was their reply?

A There was no reply nor was there any effort to leave.

Q What, if anything, did you then do?

A Would you repeat that.

Q I say what, if anything, did you then do after you had made inquiry of all these individuals and received no reply?

A Well, Prosecutor, when you say, "What, if anything, did you do?" this is difficult to answer in a few words. This was somewhat of a chaotic state. I had been summoned to City Hall. One of the patrol cars, manned by two of our men under my command, had been summoned there. I either arrived before they did or I didn't see them arrive. I didn't see them until a couple minutes later. There was a little side-bar with Director McBride, Sergeant McDonough, myself, Patrolman Downing in particular, as I recall, and it was then decided there had been several requests made of these people to leave and we had reached a point, more or less, of no return. Either they were going to leave or they would be placed under arrest, and that is what was done.

Q After they were placed under arrest were they removed?

A Yes, sir, they were.

Q Did they accompany you voluntarily?

A No, sir, they did not.

Q How were they removed?

A They were all removed individually by at least two police officers, each person, and each one was carried bodily from the second floor to the first level, back out the door of the City Hall to the police level, and placed in a police van and taken to Police Headquarters.

Q Was Officer Guadagno assigned to you this particular evening?

A Yes, sir, he was.

MR. PHELAN: Your witness, Mr. Fox.

CROSS EXAMINATION BY MR. FOX:

Q Sir, you have no knowledge of what went on inside the hall, do you, on this evening?

A No, sir, I do not.

Q You observed just what happened outside?

A That is correct.

Q Other than your observation of these individuals seated and not moving outside the doors, is there anything else that they did that was in any way unruly, noisy or let's say disorderly?

A No, sir, nothing other than blocking the doorway.

Q They were just seated?

A They were seated, as I stated, in a circular -- I wouldn't say a perfect circle. I feel it was more of an oblong position. They all had their arms locked one to the other to the person on their right or left as I testified here, and some I can't say exactly whom, but some of their legs locked.

Q Did you see anybody try to go in and out of that door while you were there?

A No, sir, I did not.

Q Can you identify the six defendants here in relation to their specific positions outside that door?

A Specific positions?

Q Yes.

A No, sir, I cannot. I didn't see the six defendants. I only saw five. And for the clarification of the Court, I'll state here I did not see Mr. Callender. I saw the other five defendants.

Q You observed the five in an oblong position?

A In a circular position, not a perfect geometric circle. They were in a circular position.

Q How far away from the doors was the man at the end of the circle who was farthest from the door, how far in feet?

A Perhaps five feet.

Q And how close to the door was the man or woman who was closest?

A My estimate would be within ten or twelve inches, and there was more than one, there were at least two.

Q There are two doors there, are there not?

A That's correct.

Q Were they in front of both doors?

A They were.

Q Were any of them directly in front of any other one of them?

A Not when I observed them. Other than their legs, some of them having their legs out entwined into the next person's legs. If that would be construed to be in front, they were in front.

Q As you observed them they were side by side?

A Yes, sir.

Q So as to form a circle or semi-circle?

A Yes, sir.

Q Was it a complete circle?

A It was a complete circle.

Q Then the diagram as Patrolman Downing drew it isn't entirely accurate as you remember it, is it?

A That is not my recollection.

Q So you saw five people in a complete circle?

A Yes, sir.

Q No further questions, Sergeant.

MR. PHELAN: Thank you.

(The witness leaves the witness stand.)

MR. PHELAN: Patrolman Guadagno.

GERALD J. GUADAGNO,

called as a witness by the State, being duly sworn, takes the witness stand and testifies as follows:

DIRECT EXAMINATION BY MR. PHELAN:

Q Officer, are you a member of the Trenton Police Department?

A Yes.

Q On November the 5th, 1964, did you have occasion to be on official duty?

A Yes.

Q Did you have occasion to be detailed to the municipal building on East State Street?

A Yes.

Q And upon your arrival at City Hall, will you describe to the Court what you observed?

A Well, I went inside the City Hall and Patrolman -- I mean Sergeant McDonough was on the -- met us there inside the hallway there on the first floor and explained to me that there was a little trouble up there at the City Council meeting. So we went upstairs and getting to the hallway of the Council in front of council chambers, I saw this cluster of people sitting down, some with legs outstretched, some with their legs locked and all of them with their arms locked, and at that time Sergeant McDonough told these people that, "If you'll leave everything will be all right and it will be forgotten about." However, there was no response when he talked to them.

At that time I assisted in taking these people out bodily from the City Hall second floor to the elevator, down and out the back door into the police van.

Q How many did you remove yourself, Officer?

A Well, I didn't remove them myself, I had assistance from my partner.

Q Who was your partner?

A Patrolman Chordas. I believe I removed about three of them with him.

Q Do you know who you removed?

A I can't recall. I think there was two men and one woman.

Q And how would you remove them, Officer, can you describe that?

A We had to drag them and carry them.

MR. PHELAN: Your witness, Mr. Fox.

CROSS EXAMINATION BY MR. FOX:

Q Patrolman, did you say to these people, or someone say in your presence, "If they voluntarily left there would be nothing further done"?

A They were told that, yes.

Q Would that include all defendants?

A As a group, yes.

Q Include Mr. Callender?

A Yes.

Q Was that said in your presence, sir?

A Yes.

Q Do you remember anyone when you appeared at the scene try to get in or out of that meeting hall?

A I can't recall it, no.

Q And you, sir, of course, have no knowledge of the incidents inside the meeting hall, no personal knowledge of the incidents inside the meeting hall that preceded your arrival on the scene?

A No.

Q Were these people seated then in a semi-circle when you arrived?

A My description it would be like a cluster, sort of open webbed type of cluster.

Q Can you describe that for us then?

A Well, it would be like an intertwining sort of thing. If you tried to get through it, you would have to do sort of a hop or step up high with your knees and all.

Q Were any of them against the wall?

A I can't recall if they were against the wall or not. They might have been pretty close to it though.

Q Were they all close to one wall?

A No, they were spread all over the entrance of the chamber entrance there.

Q In this cluster that you describe with one next to the other?

A A couple of them could have been next to each other, yeah.

Q Do you remember any of them being next to each other?

A Yes. There were some that were next to each other, but I can't tell you which one was next to each other.

Q One was by the side of the other?

A Yes.

Q Do you remember how many were side by side?

A There could have been at least four of them.

Q Where were the other two?

A They were intertwined within that group.

Q In front of the four who were side by side?

A In front of or in back, either one it could have been.

Q These four who were side by side in a cluster, were they -- did they have their backs to a wall?

A Well, like I say, I'm not sure four were side by side or not. It appeared to me it was like a cluster there.

Q This group in a cluster, did they have their backs to a wall?

A Yeah, some of them did.

Q How many?

A I can't say how many.

Q More than three?

A I couldn't say that.

Q But some of them did?

A Some of them had their backs to the wall, yeah.

Q Was it more than one?

A Yes, definitely more than one.

Q Was it at least two?

A At least two.

Q Could it have been more?

A Yes.

Q Which wall is that -- is that the wall shown by the heavy line in that picture in the lower right?

A Well, it's the walls of the vestibule, sort of like the vestibule to the City Council Chamber.

Q The wall on the left as you walk out, I take it.

A They were by both walls. Some of the group had their backs to each wall.

Q Well, how many had their backs to that wall I referred to -- you said three?

A I think it could have been three, yeah.

Q So maybe three had their backs to that wall?

A Yes.

Q They were side by side?

A They could have been side by side or semi-facing.

Q And where were the other three --

MR. FOX: I'll withdraw it.

Q Did you observe five or six people?

A I observed a group of about six.

Q There were three, then, that had their backs to the wall and were side by side. Where were the other three?

A They were semi-facing each other, not exactly side by side. They were hooked.

Q How far away from the door was the man who was farthest from the door, how many feet?

A I didn't measure that there. I couldn't tell you exactly how far. It wasn't very far though.

Q Was it more than five feet?

A No.

Q Was it more than four feet?

A No.

Q Was it more than three feet?

A No.

Q You mean the man farthest from the door was within two feet of it?

A The entrance to the council chambers?

Q Yes.

A Yes.

Q Was it more than one foot?

A I couldn't say for sure.

Q So this whole group was within two feet of that door?

A Not the whole group, no.

Q If the man farthest from the group was within two feet from it, where were the others -- they had to be closer, didn't they?

A The man farthest from it was a lot more than a foot away from there.

Q Perhaps you misunderstood me, sir. The man farthest away was a foot? I thought you said within two feet.

A The man farthest was a lot more than two feet away.

Q How many feet?

A I'd say about five feet away from the door.

Q Do you remember approximately what the width of the door was?

A The door?

Q Yes, one door.

A I'd say it's like that door over there (indicating).

Q You mean it's about that wide? Those are two doors over there, are they not?

A Yes.

Q Is one door as wide as one of those doors, one of those two?

A I'd say it was just a little bit wider one door is, but not much more.

Q That would be about three feet, wouldn't it?

A Just about that, yeah.

Q The man who was farthest away, you say, was about five feet?

A Approximately that, yes.

Q How about the man next to him, next closest, was he less than five feet? Would you say --

MR. FOX: I'll withdraw that.

Q Would you say he was about four feet away?

A I'd say about four feet away.

Q How about the others, were they any closer?

A Well, the closest one to it was about a foot away from the door.

Q Wouldn't you say if two people were more than three feet away, they didn't interfere with that door?

MR. PHELAN: I'll object, your Honor. He is asking for conclusions on behalf of the witness.

MR. FOX: I'll withdraw it, sir.

Q Other than being seated and not moving, were these people in any way noisy or disorderly?

A No, I didn't hear anything.

MR. FOX: No further questions of this witness.

(The witness leaves the witness stand.)

MR. PHELAN: Patrolman Chordas, will you step forward.

JOSEPH CHORDAS, called as a witness by the State, being duly sworn, takes the witness stand and testifies as follows:

DIRECT EXAMINATION BY MR. PHELAN:

Q Officer, are you a member of the Trenton Police Department?

A Yes, sir.

Q And on the evening of November 5th, 1964, did you have occasion to be on duty on that particular night?

A Yes, sir.

Q Did you have occasion to respond to the municipal building on East State Street in answer to a radio alarm?

A Yes, sir.

Q And would you describe the conditions on the second floor of the municipal building upon your arrival.

A Well, upon our arrival we were met by Sergeant McDonough and he informed us that a group of individuals had sat down in front of the council chambers door and refused to move.

I didn't get too close to them at that time. We were approximately twenty feet away from them. I was instructed by the sergeant to bring the patrol ambulance around to the rear of the building, which I did. Upon bringing the ambulance back to the rear of the building, I entered the building and was again met by the sergeant and instructed to bring up the stretcher because the parties refused to move and they were going to be removed bodily.

I carried a stretcher to the second floor and as I got there I was instructed by the sergeant to bring the stretcher by the group and they were going to start carrying them. That's the first, the closest I got to the group, and I don't know who was who or what was what. They were all intertwined with their arms and they all had to be carried out bodily.

Q Did you place anybody on the stretcher?

A Yes, sir.

Q Do you know who?

A I don't know who it was. I know it was a man. I seen the back of his head and they had to be pried apart.

Q After you placed him on the stretcher, what did you do?

A Patrolman Guadagno and I carried him out. We took him into the elevator, out the first floor, down the steps to the first floor, out to the ambulance.

Q Do you recall how many personally you helped in removing?

A I believe it was three.

Q Three?

A One male and two female.

Q Were there other officers present?

A Yes, sir.

Q Besides Sergeant McDonough and Patrolman Downing, Sergeant McKeever, Patrolman Guadagno and yourself?

A Yes, there were.

Q Do you recall who?

A Patrolman C. Moon and Patrolman Halmak.

Q Was the Director of Public Safety also in attendance?

A I don't recall seeing him.

Q You didn't see him?

A No.

MR. PHELAN: Your witness.

CROSS EXAMINATION BY MR. FOX:

Q I take it the only contact you had with the incidents this evening was your activities in assisting removing of three people?

A Yes.

Q Did you observe the hall when you arrived outside the door?

A I seen a group of people sitting on the floor. Who they were or their names, I couldn't tell you because I don't know.

Q Do you remember their positions on the floor?

A I wasn't that close until I brought the stretcher up.

Q Were they against the wall; do you remember?

A I couldn't tell you.

MR. FOX: No further questions.

MR. PHELAN: Thank you, sir.

(The witness leaves the witness stand.)

MR. PHELAN: Your Honor, I have two other police officers who rendered assistance in this exodus from the City Hall. They're not here right now. I think they are out in the corridor. The sergeant is checking on them right now. I feel sure their testimony would be cumulative, but I would like to present them to the Court, if the Court desires, otherwise the State would rest, sir, with that reservation.

MR. FOX: Offhand, sir, I see no relationship between this case and the activities of the police officers who happened to remove people from the room, but we're dealing with activities of people inside the council chamber and their activities directly outside. It would seem to me irrelevant that an officer did remove them.

THE COURT: All right.

MR. PHELAN: I think it would be very material because they describe the conditions that they observed upon their arrival which is the second part of the --

THE COURT: Well, we already have testimony. I am just indicating. I don't want to limit you, but you stated it would be cumulative.

MR. PHELAN: It will be cumulative.

THE COURT: Is that it?

MR. PHELAN: That concludes the State's case.

MR. FOX: Shall I proceed, sir? I would like to make one motion, if I may, or after lunch. Would you like to hear it now?

THE COURT: All right.

MR. FOX: These individuals, these six defendants are all charged with the same violations of the same offense. The charges as to each, as is apparent from the complaints, are identical. There is no distinction or singling out as to the conduct of, let us say, one Mr. Callender or Mr. Smith with that of the conduct of any of the others, Mrs. Lewis or Joyce Schurik.

The first count, as I am sure you are aware but I would just like to emphasize, is that all defendants by noisy and disorderly conduct did disturb and interfere with the quiet and good order of the City Council meeting.

The second count on its face is identical. It is that the same time these defendants obstructed and interfered with persons lawfully therein. It might be said, although I would disagree, but it might be said that the first count directs itself to the activities that took place inside the meeting, and the second count directs itself to what happened outside in the hall.

It seems to me at the outset they both deal with the same. They're in effect one count. They both deal with interfering with what happened at the meeting, inside or outside.

Assuming this isn't so and assuming these defendants are properly tried on two counts and can be fined on two counts, these are not in effect identical. The case as to the first count, again assuming this deals with what happened inside the hall, I think is severely limited if it is to apply to all defendants.

There has been only one witness and

that witness, the City Clerk, in no way identified specifically any six people as having anything to do with obstructing or interfering with the meeting while it was taking place inside the hall. The best that can be said as to him, as to his testimony, is that there was a statement by Mr. Callender, but as to the others there was a chanting which took place after the President had asked Mr. Callender to be removed.

There is no other testimony by anybody else as to the activities of those other than Callender being in any way an interference, and the testimony of the City Clerk is limited since it seems to me quite obvious that what he spoke about didn't interfere with the meeting because by his own words the meeting at that time had been temporarily halted for the removal of an individual.

And if it be so that the speaking in at best a voice louder than an undertone by some people of the words, "Freedom; freedom," twice, maybe three times, is a violation of a criminal statute at a public meeting which quite obviously deals with a controversial issue. If this be so I find it hard to determine what statements of any nature would not also be violations of a criminal statute.

None of the police who testified here, except the two patrolmen who were at the meeting, had any knowledge of what happened inside the meeting hall. Certainly the two patrolmen who are there and did testify in no way specifically noted the people who did make this chant, if it be a chant, and my recollection is they did not notice it to be anything more than a murmur or a voice or voices, some voices that took place that was any greater than anything anybody else did.

I'd ask certainly as to that first count, that it be dismissed as to these defendants who are somehow vaguely associated with the chant, in most cases have very little specific identification of them. It seems most of the testimony has been directed to one statement made inside the chamber by one of the defendants here, that defendant being Mr. Callender, who was supposed to have said, "We haven't done anything yet," or, "You haven't seen anything yet," something to that effect. If this alone is enough to violate a criminal statute, taking the State's case in its best light, it seems to me it would take very little at a public meeting of a City Council.

I am sure your Honor has been to many public meetings, I know we all have. It would take very little to violate such statutes and most public meetings, I would submit to you, would not be allowed to continue if activity of this kind on every occasion was made the subject of criminal action.

I would say, further, in any event this statute referred to in the first count, 2A:170-28, is not intended to apply to this type of meeting. The statute itself, true, does in its first section -- it is only a four-sentence statute -- does say:

S tat

> "Any person who by noisy or disorderly conduct disturbs or interferes with the quiet or good order of any place of assembly, public or private,"

but then at the end it says,

> "including schools, churches, libraries and reading rooms --."

These are places at which there would ordinarily not be controversial public meetings, certainly not in a church or library or reading room.

As you can see from the annotations in the statute, none of the few cases that deal with the statute deal with a public meeting of this kind. On this ground and on these grounds, it seems to me certainly this first count should be dismissed as to all defendants, if you consider the statute applying only to particular types of meetings, and as to five of the six, if you consider that all they did was make a very limited and minor response, if this is in fact so, to a statement from the President of the

Council a man should be removed.

These, of course, apply to the first count, and as you are aware I'd like to remind you again that all of these defendants were convicted of two counts and fined separately on each.

Now, if the second count refers only to what happened outside the chamber room and in the hall immediately near the doors, I have yet to hear any witness say that there was any interference with a member of the public who tried to leave this room. Mr. -- the City Clerk, I have forgotten his name, said he had some trouble in opening the door.

Just to refresh you, sir, I'd like to read the pertinent section of this Statute 2A:170-29:

Stat

> "Any person who in any place, public or private, obstructs, molests or interferes with any person lawfully therein,"

has violated this disorderly person's statute.

I haven't heard of anyone so far

who was obstructed or molested or interfered with, except perhaps the City Council Clerk. He was delayed at most for a minute in leaving the chamber as part of his official duty or what he deemed to be his official duty. No one has suggested that there was anyone, any single member of the public who had any trouble getting in and out of these doors. As a matter of fact, the meeting continued.

It may be this sitdown that took place outside is a violation of another statute. I don't know. It may be this is a form of interfering with an arrest. That may be. But I can't visualize how this interfered with anyone, except perhaps how it might have interfered but in a minor way with the attempts of this Clerk to leave. But he is an official who was only remotely interfered with. That should not be a cause for finding six people guilty who were at a meeting admittedly for a just reason, for a proper reason.

I don't think and I don't see -- you have to draw lines in these cases and

I don't think that the line should be drawn here. If there is an offense it was perhaps sitting down and perhaps a statement that was made by only one man, one defendant here.

There is no charge of conspiracy. If there is an offense that should be it. I don't think that is it, but if there is an offense I think that should be it.

Certainly if you look at the State's case in its best light, in my opinion anyway, that view of the case would lead to a dismissal of the first count, if not as to all as to five and on the second count as to some. Because I remember, my recollection, of course, of this testimony is at best there were some who were seated outside who were more than three feet or so, they were further away from the door than the width of the door itself. How can that be an interference with anybody?

Those people, true, locked arms, some said, but they themselves didn't brush the door. They just were sitting down in the hall. Now, sitting down in the hall I'm sure is objectionable to many of us, but the question here isn't does that disturb our own private notions of the way people should act at public meetings, and as far as that goes I'm not so sure. The question is, does that violate this statute. Certainly as to some I submit, and as to all, it doesn't since no one at that meeting had any problems to get in or out. The meeting continued except for a brief interruption.

That, sir, is the substance of the motion. I hope it hasn't been too lengthy. I request dismissal based on these remarks.

MR. PHELAN: Your Honor, I completely disagree with Mr. Fox's reasons for urging the dismissal here. I think the very purpose of the statute is to cover a situation of this nature. The testimony as it now stands, without contradiction, is that the Clerk of the City Council during the course of a duly constituted meeting by his own testimony said he had difficulty in going from the council chambers into the corridor and ultimately on into his office for the purpose of summoning aid.

You had the uncontradicted testimony of Patrolman Downing that in his opinion likewise the conduct of these six defendants inside the chamber was disruptive. That is the very purpose of the statute. I am sure it was through inadvertence that Mr. Fox keeps referring to a criminal matter, criminal matter. He knows this is under the Disorderly Persons Act. This is a quasi-criminal action that has been brought here.

By all the testimony of all the officers, even the ones that were summoned from other parts of the city to the municipal building of the Capitol of the State of New Jersey to remove these demonstrators, if you want to call them that, flaunting themselves outside of the City Council Chamber, laying, sprawling about, they have been described in meeting by his own testimony said he had difficulty in going from the council chambers into the corridor and ultimately on into his office for the purpose of summoning aid.

You had the uncontradicted testimony of Patrolman Downing that in his opinion likewise the conduct of these six defendants inside the chamber was disruptive. That is the very purpose of the statute. I am sure it was through inadvertence that Mr. Fox keeps referring to a criminal matter, criminal matter. He knows this is under the Disorderly Persons Act. This is a quasi-criminal action that has been brought here.

By all the testimony of all the officers, even the ones that were summoned from other parts of the city to the municipal building of the Capitol of the State of New Jersey to remove these demonstrators, if you want to call them that, flaunting themselves outside of the City Council Chamber, laying, sprawling about, they have been described in different positions, and bearing in mind that this was not an incident that took place in a period of five seconds. It was a continuing incident, with milling around. We had the testimony of the City Council to the effect that the removal of Callender was ordered, there was a large group in attendance, and that the safety of those lawfully there dictated the wisdom that the President displayed in ordering the removal of Callender.

I think the statute is pertinent. I think the State has more than amply born the degree of proof required and, consequently, I would urge the denial of the motion of Mr. Fox.

MR. FOX: I just want to make a few remarks, sir. It just appears to me that certainly from the remarks of Mr. Phelan, the first count to at least five of these defendants should be dismissed for the reasons I stated before, which as far as I can see remain uncontradicted. There is nothing here to show that at least five were in any way acting out of order in this meeting. Of course I renew my motion as to the other arguments I made.

THE COURT: We'll be back at two.

MR. PHELAN: Yes, sir. Will there be a ruling on the motion at that time?

THE COURT: Yes.

(Luncheon recess taken at 12:50 P. M.)

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Afternoon Session

Time: 2:05 P. M.

(Counsel present.)

(All defendants present.)

THE COURT: Let's see. There are two counts here. I am going to deny your motion as to the second count regarding all six defendants. The first count regarding Mr. Callender I'd like to hear more from you, Mr. Phelan, regarding the other five on the first count.

MR. PHELAN: Well, again, your Honor, I would repeat. The testimony of both Mr. Maziarz and Mr. Walsh, the President, as you will recall he said on two occasions, prior to the third occasion which ended up in the order to Patrolman Downing to have the defendant Callender removed, he had directed his remarks to the group that were seated over there. In additon, I believe there was testimony to the effect that the defendant Crittendon --

THE COURT: I am asking your theory on the first count.

MR. PHELAN: The general demeanor of all of them, your Honor, resulted in this disturbance and at the time of removing of Callender, the chanting of the word, "Freedom."

THE COURT: Who said that? That's my problem.

MR. PHELAN: It came from all of these individuals. There was testimony as to Crittendon, that he had locked his arm into Callender's arm in attempt to prevent the police from removing Callender from the council chambers.

THE COURT: Perhaps as to Mr. Crittendon there is one witness who testified. How about the others because someone indicated, I think President Walsh, maybe all of them weren't even on that side of the room, they were on the other side of the room?

As far as Mr. Callender, I have no problem as to the first count. But as to the others, with specifically the noisy conduct and disorderly conduct, I would assume perhaps Mr. Crittendon, I believe the testimony of one of the witnesses was he locked his arm. But we don't know who did what as regards the other for certainly except some people yelled, "Freedom," three or four times. I think that's the testimony.

I am up in the air as to who yelled and for that reason I'll dismiss it as to those four on the first count. I'll deny it as to the other two. I'll deny the motion as to all six regarding Count No. 2.

MR. FOX: Shall I proceed, sir?

THE COURT: Yes, sir.

MR. FOX: Lou Smith.

THE COURT: All right.

LOUIS SMITH, one of the defendants, being duly sworn as a witness, takes the witness stand and testifies as follows:

DIRECT EXAMINATION BY MR. FOX:

Q Mr. Smith, where do you live?

A Presently in New York City.

Q What is your occupation, sir?

A I'm the Northeast Regional Director for Core, Congress of Racial Equality.

Q I take it you spend full time in your activities as an official of the Core, Congress of Racial Equality.

A Yeah, most of the traveling throughout the cities where we have Core chapters in this region.

Q What region is that?

A It extends from New England to Washington, D. C., back through Buffalo, Pittsburgh, all of New England States -- New York, Pennsylvania, New Jersey, Maryland, Delaware and District of Columbia.

Q On November 5th, on the evening about which you heard testimony, were you present at the City Hall in Trenton?

A I was.

Q What was your reason for being present at that time at that place?

A I believe it was a week or so before I had spoken before a civic group here in Trenton, at which time Mrs. Lewis, the Chairman of Trenton Core, made me aware of the problem they were having getting adequate relocation in the Urban Renewal Program here, and asked me would I come down and assist the chapter.

Q Was this your first appearance at a public meeting in Trenton?

A No, it was not. When I first came out of Mississippi I was brought here on a platform with Mayor Holland and others for speaking engagement.

Q What time did you arrive at the meeting hall?

A I think we were a little late. It was after eight o'clock, I'm sure.

Q What was the subject of the meeting; do you recall?

A Well, when we got there they were discussing the Urban Renewal relocation problem as regards the Fitch Way No. 3 Project.

Q Well, when you say, "when we got there," did you come with others?

A A lot of us. There were --

Q Who were they, about how many?

A At least ten, twelve of us altogether.

Q And was this a group of Core members?

A Some were Core members, some were people who were just interested in the Fitch Way Project.

Q Had you met before some place?

A No. When we came into Trenton we went by Mrs. Lewis' house and from there I think it was two or three cars we came into the meeting together.

Q Had you planned any demonstration for this meeting?

A No, we had not, other than we had made signs that we were to set on the front of the seats, which we did.

Q And where did you, yourself, sit when you arrived at the meeting hall?

A I believe I was the second row from the front because I put my signs right on the front seat, front row seat.

Q In relation to that diagram on the piece of paper over there in which section were you seated?

A Well, frankly speaking --

Q Extreme left?

A We were in No. 1. We weren't in No. 2. We were as far left -- as far right coming in the back of the place as you could go. We were in this last section.

Q Where did you say you were seated?

A On the next -- well, the front are where people were seated, and I think it was the second row.

Q Were there other Core members in that section in the left?

A Scattered throughout.

Q In No. 1?

A No. 1 Section.

Q About how many?

A Oh, boy! Six, seven, eight. I would say for sure eight, nine.

THE COURT: This is in Section 1, you are saying?

THE WITNESS: Yeah.

Q Were there other people in that section other than Core members?

A Yes, there were.

Q About how many others?

A Dean Good came in and sat there for a while, I think Mrs. McCrea was sitting there for a while. At least two more I can think of and there were people I didn't know at all.

Q About how many were there?

A Really I couldn't say. I just know there was people sitting in the section I didn't know.

Q Could you describe -- well, how many speakers were there on this issue?

A Dean Good spoke, NAACP representative spoke, Mrs. Lewis spoke, and a fellow from the Fitch Way area was speaking.

Q Were there placards held by others than Core?

A The NAACP had placards. When whoever the NAACP member was finished speaking they applauded, waved banners up and down in the air.

Q Which speaker spoke for the NAACP; do you remember?

A Dean Good tried to, but they wouldn't allow him.

Q What do you mean by that, sir?

A They said he was -- he was State Housing Representative for the NAACP and therefore he couldn't speak, which very frankly bothered us. Since Federal funds were involved we didn't know how you had to belong to Trenton.

Q Who spoke after Dean Good?

A I think Mrs. Lewis did. It was hard to tell because at that time Dean Good was carrying on a conversation with Woodson, one of the councilmen, who was right on that end where we were, in fact they heard what we talked about.

Q When did the NAACP speaker speak?

A I think it was the first speaker we heard.

Q What was the reaction you heard, if any, when he spoke?

A It just was at the end, I really paid no attention to it because they were waving the banners and applauding.

Q And after he spoke who spoke next?

A I believe it was Mrs. Lewis.

Q And what was --

A No, it was Mr. Good.

Q Describe what happened as far as the relationship between Mr. Good and others on the Council and audience. What happened as far as that goes when he spoke; do you remember?

A Except, yeah, there was general reaction each time Dean Good would get to a good point that seemed to please the audience.

Q What was the reaction like?

A Like, you know, someone would say, "That's good," somebody else would say, "That's telling him; that's right." This type of thing was going on.

Q Were there interruptions of any kind other than those?

A Nothing except us being interrupted from the conversation between Mr. Woodson and Mr. Good.

Q And after Dean Good spoke then Mrs. Lewis spoke?

A Mrs. Lewis spoke.

Q What was the nature of her talk?

A She was talking about how they hadn't had any public hearings in the Fitch Way area, how there was no relocation office, the people in the area didn't know anything what was happening to them. That was from our surveys. Things of this nature, trying to bring this to City Council's attention.

Q At any time during these talks by the various people, what did the City Council and its President do -- did they listen?

A No. At times they were interrupted. I don't know whether Mrs. Lewis was interrupted or not. It's been a way back. I just remember the last big interruption.

Q What's that?

A That was after Mrs. Lewis had spoken.

Q What happened then?

A The fellow from Fitch Way was speaking and he was saying, "What's going to happen to me?" I remember Councilman Walsh told him he didn't know. The fellow said, "Even a dog, you know, has a place to live." Then there was some admonishment of this person, and someone said, "Well, let the man talk." I remember hearing that.

Q Do you know who said that?

A No, I do not.

Q Was it from your group?

A I'm not sure.

Q Then what happened?

A City Council turned to our section and said, "Any more disruption like that and I will have you removed from the chambers." At that time Mr. Callender got up and said, "There's been no disruption yet."

Q All this time where were you seated?

A Right on the front where people were sitting. I believe it was the second row of seats.

Q Where was Mr. Callender seated?

A I didn't know that due when they came to get him he was seated all the way in the back on an end seat.

Q How many rows away from you?

A The distance --

Q More than seven or eight rows?

A Oh, yeah. He was catty-corner to me, too.

Q Where were the other defendants?

A I think Mrs. Lewis was sitting beside me.

MR. PHELAN: Not what he thinks, your Honor. I think he should testify as to what he knows.

Q To the best of your recollection.

A To the best of my recollection they were scattered throughout that section.

Q Where were they in relation to Mr. Callender?

A I would say they were scattered between Mr. Callender and myself. If you consider me the left front and Mr. Callender the right rear of that section, then it was just sort of people spread all in between us.

Q Do you recall when the policeman came to speak to Mr. Callender -- did you observe that?

A Yeah. Policeman came to speak to Mr. Callender. He came around the back.

Q What happened at that time?

A And I don't know what happened at that point, except what he said -- I don't know what he said, then he did go and he met with another policeman, and he talked to Mr. Callender and they came back again and they reached under Herb and picked him up.

Q Were any defendants seated next to him?

A Pulled him off the seat. I didn't see any seated next to him.

Q Was the seat empty?

A Yeah. One cop was on one side and one on the other, and they were trying to pull him over the seat.

Q Did you see anybody lock arms with him?

A I did not.

Q Did you observe him when he was being removed from the room?

A As well as could be. We saw the two policemen going and we imagine Herb still in the middle. The seats come up so high.

Q What did you see?

A I got up and I walked out behind them. When I got out they had Herb by -- when they were going around the last bend they had Herb by the arm and the feet. He was sort of dragging along the floor as he was going out.

Q What did you do?

A I walked outside and they had placed Herb against the wall.

Q Which wall?

A If you were coming in it would be your right wall, if you were going out it would be your left wall. Over against the wall like that (illustrating). He was sitting there. Exactly what I said to him I don't remember, but I know he tried to get up. The officer came over and pushed him back down. He said, "You can't get up. Stay here."

Q Then what did you do next?

A At which point I said, "Well, Herb, if they're going to take you to jail then I don't think you should go by yourself and I'm going to go with you. I'm going to stay with you." I sat down beside him and locked my arm. I didn't sit either. I stooped against the wall.

Q Were you to his left then, is that right?

A If he's sitting here, I'm to his left, right.

Q Where were the other defendants?

A Mr. Crittendon came and sat down beside me, which was to my left, and put his arm in mine and the three women sat directly in front of us. I remember because they had their legs down.

Q You weren't in a semi-circle?

A No. I would like to draw exactly how we were. We have seen so many formations.

Q Would you do that.

MR. PHELAN: May we use a new sheet of paper, your Honor?

THE COURT: I think it would be better if you would, please. Can you release that?

A We'll say this is the hallway and these are the doors to the chamber (drawing), the chamber being in here coming out. This door was closed back to here (indicating); this door was closed back to here (indicating). Herb sat right in here against the wall (indicating). The door was open at that time because if they'd have set Herb anywhere in here they couldn't move the door. They had him outside against the wall. I sat down beside him here with arms locked, very close together (indicating). Mr. Crittendon sat there and the three women sat in front of us like this (illustrating). Because I remember they had dresses and had their legs underneath them.

Q Where was the door extended when open?

A Back to here (indicating). The width would take this arc (drawing). We were here (indicating). Herb was first.

Q On that diagram where is the entrance to the chamber?

A Well, figure the door was stopped about here (indicating). The entrance is through this side and through this side (indicating).

Q Were you ever in any other position than the ones you just described?

A No. It's very interesting because if your Honor wants to see I have spondylitis, rheumatoid arthritis of the spine, and I cannot sit down and put my legs out. It's a physical impossibility. In fact my doctor would be very happy if I could.

Q When you first came out I take it you were standing.

A Yes. When I first came out and spoke to Herb.

Q Where?

A He was, for example, sitting here (indicating) and the door was swung back to here (indicating), and I was talking to him and he wanted to get up because nobody knew he was under arrest. I didn't. The officer pushed him back down and said, "Stay there." This time imagining Herb is where this plug is, I walked over like this (illustrating), I leaned down against the wall because I need the back for support. I locked my arm with Herb and that's where I was when the police came.

Q Did you stay in that position until the police came?

A Yes.

Q Did they ask you to leave?

A No. The only thing they said, and that wasn't directly, they said, "Get those two first," and they started ripping Herb and myself, our arms, apart. I was the first one carried out, not on a stretcher. I was drug out. Even after we got to the police station I asked them, "Am I under arrest and what am I under arrest for?" I never found out until I came to your apartment before the first trial.

Q Did you observe when the doors were closed, City Council doors?

A I know they were open at first because we were looking into Council. Who exactly closed them I don't know. I know they were eventually closed.

Q Did anybody come out during the time they were open?

A Many people came out. There were some reporters that came out. In fact the Commissioner came out and he stood in the door actually, and someone asked him, "What are you going to do about this?" And he made the remark, "My hands are tied. I can't do anything." And he went back in and he came out several times. I remember Mrs. Lewis -- Dean Good came out and talked to the police. He told them. He said, "You're all making a mistake." Dean Good was walking in and out at the time. There were a lot of people in the hallway.

Q Do you recall what happened inside the meeting room at the time that the meeting was temporarily suspended and the time you walked out of the room?

A Only after when Walsh told the police to remove that man, at which time I had turned around and looked at Herb and then this little thing. There was nothing going on at that point, if you're talking about any Council. Even the time we were walking out there was no meeting really going on.

Q What was the speaker doing?

A Standing there was the last I saw of him.

Q Do you recall if he resumed speaking?

A After we got outside?

Q Yes.

A I don't know and I couldn't honestly say because I was too concerned with the immediate situation.

Q Do you remember what happened --

MR. FOX: Strike that, please.

Q After the doors were closed, did you observe -- what did you observe as far as people coming in and out of those doors are concerned?

A As I mentioned, everyone was coming in and out of the door across the other side of the hall from us.

Q Which door was that?

A That's the -- we're sitting as you're going in the left door over here (indicating), and this is where people were. In fact people were standing there.

Q Did you observe Mr. Maziarz, the Clerk, coming out?

A No, I didn't notice him.

Q Did you or any of your co-defendants in any way interfere with people coming in and out of that door?

A No. Very honestly if that was our intent we would have sat against the door and not against the wall. I can tell you honestly my intent. It was, I guess, partly instinct. Three of us just come out of Mississippi. There you just learn automatically --

MR. PHELAN: I'll object to this. I am not interested in Mississippi and I don't think this Court is.

MR. FOX: Well, as far as this trial is concerned, I'll grant Mississippi isn't entirely relevant otherwise there may be concern.

By Mr. Fox (continuing):

Q Please, Mr. Smith, just answer the question. You were speaking about your intentions, I believe. Would you proceed.

A Yes. Well, it was to -- we have learned from instinct --

MR. PHELAN: I'll object to that, your Honor.

Q What were you doing at this time -- what did you observe as far as the door was concerned?

A I felt as far as the doors were concerned people were coming in and out. It was sort of curiosity, I remember that. Even some person from some white citizens' council newspaper wanted an interview and statement. There were people milling around in and out of the hall.

Q Did the policeman speak to you?

A A policeman hasn't spoken to me.

Q Did he?

A No, not in there or the Police Station, except to tell me my bail was $200.00.

Q Did you at any time indicate you would leave peacefully?

A It was never asked so I didn't indicate.

Q Did you observe any arrests on the part of policemen as to any defendants?

A No. I was the first one removed. As I said, they came up and they said, "Get those two first." They broke Herb and myself apart and then they pulled me down the hall. And I went -- we got into the elevator, I went to stand up, and I remember the policeman said, "Are you going to be a good boy?" So anyhow I didn't see -- I was the first one put in the wagon. So I didn't see the others arrested.

Q Did anyone at any time ask you to move?

A From the hall? No.

Q From the hall or from anywhere else.

A No. I was not even asked to remove myself from the chambers inside. I did that voluntarily.

MR. FOX: Your witness.

CROSS EXAMINATION BY MR. PHELAN:

Q Mr. Smith, whereabouts in New York do you live?

A Presently at 712 East Sixth Street. I have an office in Manhattan.

Q Now, you say that at no time none of the officers told you that you could leave?

A No, they did not. None of them told us we could leave nor ever said we were under arrest.

Q You were placed under arrest, weren't you?

A Well, arrest, yes. I was put in jail.

Q Officer Downing never said anything to you?

A I never spoke a word to Officer Downing.

Q Sergeant McDonough never said anything?

A I don't remember. I remember it was who broke us apart. I think one of them was a heavy set Caucasian policeman, but I couldn't identify him either.

Q You say Callender attempted to get up from the floor?

A Right.

Q He was seated at that time?

A He was seated against the wall.

Q When he started to get up, you say one of the officers pushed him?

A Put his hands on his shoulders and said, "Stay there."

Q Do you know which officer?

A No, I couldn't identify him either.

Q You couldn't?

A No.

Q You sat here all morning?

A Yes, I did.

Q Was it Officer Downing?

A I don't know.

Q Was it Sergeant McDonough?

A I don't know.

Q How many officers were present at this time?

A It wasn't him. It couldn't have been over one or two, two at the most, that I can think of.

Q They were the same two that were in the council chambers?

A I am not sure.

Q You don't know?

A All I saw was a uniform.

Q Were you in the stooped position next to the wall?

A That's where I was when I was even broke apart.

Q Were you in that position when you say you observed one of the police officers?

A No. I was standing over top of Mr. Callender, actually talking to him.

Q It was after that that you then got down and locked your arms?

A When he said, "You can't go," or something, that's when I backed right down beside Mr. Callender and locked arms with him.

Q You say it was your intent to go with Callender if he was going to go to jail?

A Yes, sir.

Q In other words, this was open defiance on your part at this point?

A It was open defiance of nothing. No one told me I couldn't go. If the Court would allow me, I would explain why we do that.

Q Did Crittendon get next to you and lock?

A He did.

Q Where was Joyce L. Schurik at this point?

A The three women sat in front of us. Their exact location I couldn't tell you.

Q Did they have their arms locked together?

A They were sitting there and they had their knees drawn up underneath them. I didn't see any locking on the part of the females.

Q All sitting down?

A Right directly in front of the three of us, put their legs underneath them and got up close.

Q Prior to leaving the council chamber, did you hear the chanting of, "Freedom; freedom; freedom"?

A Yes, I did.

Q Did you echo those remarks?

A I think I did it once or twice.

Q You did do that?

A Yes.

Q Do you know whether Callender echoed those remarks?

A No, I couldn't say about anyone else.

Q But you know that you did.

A Yes. It wasn't actually a chant either. It was in very low tone.

Q And you heard Callender retort to the President of the City Council, Mr. Walsh, "There hasn't been no disruption yet"?

A I didn't hear Callender retort to Mr. Walsh that way. I heard Mr. Callender say, "There has been no disruption yet," which is a little different, I think.

Q Did you leave the City Hall on your own free will?

A No, I was drug.

Q Forcibly ejected?

A Right.

Q Did the officers ask you to accompany them?

A The officers said but one word to me, one sentence, "Get those two first." That's the only words were spoken by an officer to me.

Q Did you struggle not to go with them?

A No, we never really struggle. It's against our philosphy.

Q You at no time spoke to the City Council that evening?

A I did not.

Q Do you know if the doors to the council chamber were ultimately closed?

A I do know they were. They were closed -- I remember looking in there at one time and then not being able to look in there again.

Q When the six of you were in the position that you have indicated on that sketch, was it after that that the doors were closed?

A I have a feeling -- I better not unless I can give you a direct yes or no answer. I couldn't.

Q Was there any noise going on at this point?

A From where?

Q From your group and the ones you say were in the corridor.

A There was talking going on among reporters, among other people as I mentioned, Mr. Good was talking to the Commissioner of Public Safety. There was conversation going on.

Q During all these proceedings in the corridor the Council meeting was still in regular session, am I correct?

A I couldn't tell you, especially after they closed the doors I had no idea.

Q Prior to the closing of the doors?

A As far as I know. As I say, I couldn't even say. I was outside and I was more concerned with the immediate situation.

Q Did you know Williard D. Crittendon before November the 5th, 1964?

A Yes, I did.

Q Did you know Joyce L. Schurik prior to November 5th, 1964?

A Yes, I did.

Q Did you know Marva L. Amis prior to November 5th, 1964?

A Yes, I did.

Q And you say you knew Lily R. Lewis prior to this date?

A Yes, I did.

Q And likewise Herbert E. Callender?

A Yes, I did.

MR. PHELAN: Nothing further, your Honor.

MR. FOX: That's all.

(The witness leaves the witness stand.)

MR. FOX: Herb Callender, please.

HERBERT E. CALLENDER, one of the defendants, being duly sworn as a witness, takes the witness stand and testifies as follows:

DIRECT EXAMINATION BY MR. FOX:

Q Where do you live, Mr. Callender?

A 755 East 168th Street, Bronx, New York.

Q You are an official of Core, are you not?

A Yes, I am. I'm Field Secretary for the Northeast Region.

Q Field Secretary?

A That's correct, sir.

Q What area?

A For the Northeast Region of Core.

Q Are you presently assigned to Trenton?

A That's correct. I'm presently assigned to the Trenton area.

Q What is your assignment here?

A Working on providing, if we can possibly do it, adequate relocation for the current project, the John Fitch Way Project No. 3, and also some low income housing through negotiations, and whatever else is available under Federal Law and Urban Renewal Laws.

Q You attended this meeting on November 5th, did you not?

A That's correct, sir.

Q What was the purpose of your attending that meeting?

A Well, I had been informed by my Regional Director, Mr. Smith, that a complaint had been lodged on the current plans of the city, the Planning and Development Department, in reference to the John Fitch Way Project No. 3, and I was asked to attend the City Council meeting where this was to be discussed so we could get certainly the picture that was being presented at the Council meeting.

Q Did you have any prearranged arrangement for the meeting?

A No, we didn't.

Q You attended as an observer?

A That's correct.

Q Approximately what time did you arrive at the meeting hall?

A Approximately eight o'clock.

Q What did you do there?

A Well, we sat down in the far right as you enter the council chambers in Section No. 1 on the previous diagram as indicated by Mr. Smith. I sat in just about the last row, next to the last row I believe it was. I'm not quite sure. I believe it was the last or next to the last row.

Q Where was the defendant Smith sitting, did you notice him?

A Yes. He was sitting in the second row.

Q Where were the other defendants; do you remember?

A They were scattered throughout the section.

Q Were any of them next to you?

A No, there was no one immediately next to me. I believe someone, at least one or two people were sitting in the same row but further down.

Q Did anyone at any time lock arms with you?

A No, they didn't.

Q Who spoke first; do you remember?

A I believe the NAACP representative. You mean at the meeting in reference to the project?

Q Yes.

A The NAACP representative. I believe their Housing Chairman spoke first and after that I believe their President.

Q President of what?

A President of the local chapter.

Q Of NAACP?

A Of the NAACP.

Q Were there placards in the audience?

A Yes, there were.

Q Who had them?

A The NAACP had placards that they were holding in their hands. We had placards also, but they had been placed in empty seats, particularly in the front row of the -- the first row, the row before where Mr. Smith was sitting. I believe maybe other people in the area also were in the council chambers might have had placards.

Q Will you describe the conduct of the audience and of the City Council during the time that the first two speakers were presenting their views?

A Well, there was, you know, a response to each one of the statements that were made. There was a pro and con on this thing. I believe the Planning and Development Director, Mr. Harvey Mandel, was presenting his side. There wasn't any particular response there, but most of the people that responded to the NAACP's statement and to the statement I believe of a minister, representative of ministerial group, there was applause and some cheering, you know, minimal but saying things, statements were made like, "That's what we want," you know, that kind of thing.

Q Who made those statements, the audience?

A Well, the audience, people throughout.

Q What did the members of the Council or the President do during these speeches, if anything?

A Well, once in a while he would interrupt to ask a question, but generally under speeches and earlier statements he let everyone go through what they're about to say, except for Mr. Bradley, which happened after.

Q Well, who spoke after these two speakers you just referred to, how many?

A Well, after the three that I mentioned there was also Mrs. Lewis, the Trenton Core Chapter Chairman, and she spoke.

Q What happened during her speech?

A I believe she was asked to speak louder once but she just about finished her statement without, you know, not too much interruption.

Q And then who spoke next?

A I believe it was after her, in between there -- I'm not sure whether Dean Good, the State President, spoke before her or after. I believe it was before. But then came Mr. Bradley, I believe his name was, who is a Fitch Way resident. Like myself he was not too articulate but certainly knowing what he wants. And he was able to get at least a portion of his statement out before he was interrupted repeatedly by the Council President.

Q What was the nature of these interruptions?

A "I don't understand what you mean," you know, with general smile on his face -- mocking smile, rather, on his face.

Q Who said, "I don't understand what you mean," was that someone in the Council?

A No, this was the Council President, Walsh.

Q Were there any other interruptions?

A He interrupted him again and asked him to speak up, and he was speaking quite clearly and loudly, you know, everyone was listening.

Q Then what happened?

A And in between that time I heard someone state, "Let the man speak after the last interruption."

Q Who said that?

A I don't know. It could have been anyone. And the City Council President looked around and pointed a finger in our direction or direction No. 1 Section that was indicated on the prior diagram. And he said that we were disrupting the meeting and he would have anyone, whoever disrupted the meeting again thrown out. And, as a matter of fact, his finger was pointing at me. And I replied. I said, "We haven't disrupted this meeting yet."

It was at that point the officer came over, Officer Downing I understand his name to be as his testimony, and he came over and asked me whether or not I had disrupted the meeting. And I said, "No, I hadn't." And he went away. Then he came back and he grabbed me. He had another officer with him, a sergeant I believe, because I didn't really have a chance to look at either one of them the way they snatched me out of the chair, and knowing at that point they hadn't asked me anything, they just reached over and pulled me up over the seat and started dragging me out.

Q Did they ask you to leave?

A No. They hadn't asked me to leave, you know, anything.

Q You made no effort to leave?

A No, I hadn't felt I had done anything. I still don't feel like I had done anything wrong.

Q Did the meeting continue at this time?

A I don't know because I was placed on the outside of the council chambers in the spot indicated by Mr. Smith behind the door. The doors were open and I was placed on the well as you walk out on the left side and thrown up against the wall. I remember Mr. Smith coming out and I think he asked me a question was I hurt or anything like that, and I replied, "No," and I started to get up and I believe it was Officer Downing because he put his hand on me, pushed me back and said, "You sit there," which I did.

Q You say you started to get up, what were you doing?

A I was sitting in the position they had thrown me up against the wall in, you know, trying to recuperate a little bit.

Q Were you trying to leave the room?

A It wasn't in the room. It was in the corridor and I would have gotten up and stood up and made a decision at that point. As it was there was no decision for me to make after I had been instructed by an officer to sit there.

Q Did you ever move up -- Until the time you were removed from the hall by the police, did you ever move from the spot where you were originally placed by the two patrolmen?

A No, I hadn't. I stayed there.

Q Would you show me where that spot is on that diagram.

A Certainly. Right here (indicating).

Q Where is the door in relation to where you are pointing?

A The door is here (indicating). To the City Council Chambers there's a little anteroom or something in here (indicating), and then you go into council chambers.

Q Was the door open then?

A The door was open when I first was sat up against the wall. At some point someone closed it. I don't remember who or when.

Q Did you at any time interfere with either the closing of the door or anyone coming in or out of that room?

A No, I hadn't. There were a number of people that came in and out. The reporters came out just after I was told to sit there and remain there. Several of the reporters came over and they asked questions which, you know, they didn't get answers for except my name.

Q Did you change your position on that floor?

A No. I know I stayed in this same position. There was really no change whatsoever outside of I might have put my foot down because it was up in a cramped position for a while and I might have rested it.

Q Who was seated in front of you?

A Pardon me, sir?

Q Who was seated in front of you? There are three circles in front of you, who were they?

A The three ladies sitting here -- Miss Marva Amis, Joyce Schurik and Mrs. Lewis.

Q To your left?

A To my immediate left Mr. Smith.

Q Next to him?

A Mr. David Crittendon.

Q Did you at any time resist any officer?

A No, I didn't. I had no idea exactly what they were doing and I think Mr. Smith was trying to express, you know, and I think by experience in other cities throughout the country you practice non-violence in any situation and certainly this was one. If given an order by the police if at all possible to obey you obey it. In this case it was the policeman's order that we sit, at least that I sit up against the wall, and I was joined. There was no further conversation, except when they did come up and say they wanted the two of us moved first and the two was myself and Mr. Smith.

Q Did you observe Mr. Maziarz when he tried to get out of the hall?

A No, I didn't.

Q Did you interfere with the door, or did anyone interfere with that door or any of the doors, when anyone else was trying to get out of the hall?

A No, sir. That was impossible from the position we were in. You know you just couldn't. When the door was closed, I don't know how many feet but there must have been at least four feet between myself and the door. And I was the closest person to the door closed or open.

MR. FOX: Your witness.

CROSS EXAMINATION BY MR. PHELAN:

Q What is your educational background, Mr. Callender?

A High school graduate.

Q High school graduate?

A Yes, sir.

Q You say it was Officer Downing who pushed you back to the floor?

A Yes. I believe it was.

Q You believe?

A Yes, sir.

Q I am asking you are you sure?

A Well, the reason why I believe it was is because he was the only one at that time standing over me so it had to be him and it was a policeman.

Q When Officer Downing first approached you, did he ask you to leave the council chamber?

A No, he didn't, sir.

Q The second time he and the sergeant came, did they ask you to leave the council chamber?

A No, they didn't.

Q When you were out in the corridor, did he say you were free to go, go ahead?

A No, sir. I explained what he said out in the corridor.

Q You heard the officer testify this morning, didn't you?

A Yes, I did.

Q His testimony was he said he invited you out of the council chamber, is that correct?

A That was his testimony.

Q And that he also said to you out in the corridor, "Go ahead. You're all free to go"?

A That again was his testimony, sir.

Q It was after that that you all sat down, right?

A Well, I don't agree with that. I'm saying what happened was that he came up to me and asked me first of all was I the one that disrupted the meeting. And I said, "No." And he walked away and he came back again with a companion and they immediately began to pick me up and carry me out.

Q You did say to the President of the Council, "There hasn't been no disruption yet"?

A Well, it wasn't quite in that way. I said, "We haven't disrupted anything yet."

Q What do you mean by, "yet"?

A Well, because up until that point from what he had stated pointing to us, if there is any more disruption,and I was just trying to simply state that we had not disrupted anything.

Q But you used the term, "yet."

A Yet, up until that point.

Q Did that mean you had future plans?

A Far from it. It just meant what it said, yet.

Q When did the others sit down with you?

A Well, I don't know how many minutes.

Q At what point; do you recall?

A I don't know, you know, exactly how many minutes after I was drug out, but I don't know. I can't say for certain.

Q Prior to leaving the council chamber, did you hear either the chanting, singing or the uttering of the phrase, "Freedom; freedom; freedom"?

A No, sir. All I could hear was my and feel was my back being drug along that floor on the way out.

Q You didn't hear the word, "Freedom," mentioned?

A No, sir.

Q Do you recall when your arm was locked with that of Smith?

A Yes, I do.

Q Do you know whether or not Crittendon's arm was locked into Smith's arm?

A I believe it was.

Q Do you know whether or not the young ladies had their arms locked together?

A No, they didn't. They had their legs under them. They were sitting there quite sedately, quietly.

Q What was the purpose of locking arms?

A Well, I think it gives a feeling of strength. It certainly did to me at that moment because certainly I didn't know what was happening to me. In Mississippi if you ever notice, you will find in pictures, if you have ever seen it or watched it on television, you will see that groups of people march down the streets with their arms locked. You will find people singing certainly our theme song, "We Shall Overcome," with their arms locking back and forth. It gives a feeling of security and strength at a point when you really need it in this battle for freedom and justice.

Q It wasn't in any defiance to the police?

A No, sir.

Q They had to forcibly untangle your arms in order to remove you from the building, is that correct?

A They chose to do it that way.

Q You didn't leave voluntarily?

A Sir, I was in no position to leave. They, I explained to you, had given me instruction, the police officer, to sit there and I sat there.

Q Do you receive a salary for your work?

A Yes, I do, sometimes.

Q Sergeant McDonough didn't use any force on you, did he?

A I don't recall Sergeant McDonough.

Q You say all the police officers who were there, none of them asked you to leave voluntarily?

A No, sir.

Q Tell me. Were you one of the individuals that had to be removed by stretcher?

A They picked me up, drug me to the elevator.

Q They picked you up and drug you?

A That's correct, sir. When I say, "Picked me up," picked up a portion of my body, I believe it was my arms, and drug me to the elevator and I believe from the elevator downstairs floor to the paddy wagon I was put on a stretcher.

Q Wouldn't you walk?

A I laid completely passive. I had no idea at this point what people wanted me to do outside of just remaining in the spot.

Q This was the only means they could remove you from the building, is that right?

A This is the means they chose to.

MR. PHELAN: Nothing further, your Honor.

REDIRECT EXAMINATION BY MR. FOX:

Q Mr. Callender, at the time you said, "We haven't done anything yet," did you mean by that that you were threatening to do something?

A No, sir, because we had no plans whatsover to do anything, any sort of demonstration other than observer. This was my purpose here.

Q As a matter of fact, had you done anything prior to the time you said that by way of interfering with this meeting?

A I don't believe I had.

MR. FOX: That's all.

(The witness leaves the witness stand.)

VERA McCREA, called as a witness by the Defendants, being duly sworn, takes the witness stand and testifies as follows:

DIRECT EXAMINATION BY MR. FOX:

Q Miss McCrea, were you present at the meeting of the City Council on November 5th, 1964?

A Yes, I was.

Q Did you at that time know any of the defendants here?

A I was acquainted with them.

Q All of them?

A Yes.

Q Did you go to the meeting with them or separately?

A Yes, we went together.

Q You went together?

A Yes.

Q Where did you sit?

A I was on the -- it's divided into three parts. I was on the first one, on the other side over there.

Q Is that the side opposite where the defendants were?

A Right.

Q Did you observe where they were seated?

A Yeah. They were seated on this side of me, on the right far corner.

Q Do you recall the speakers who spoke on this issue of the Fitch Way Project?

A Yes.

Q What was the general conduct of the audience during their speech; do you recall that?

A Yes.

Q All their speeches. Will you describe it?

A Yes. The NAACP they spoke first and, well, everybody else was speaking and when something went wrong, you know, the people in the audience would say, "Let him talk," or, you know, "He's right," you know, something like this.

Q Would this be said in such a voice as to be able to be heard by everyone in the room?

A Yes, because I did myself.

Q Did the members of the Council or President of the Council interrupt or otherwise speak at the time of these various talks?

A Yes. I think he interrupted Mrs. Lewis, Mr. Bradley and Dean Good twice and gave him a one minute speaking time limit.

Q What did they say?

A Well, when Mr. Bradley was speaking and Mr. Walsh asked was somebody from John Fitch Way No. 3, Mr. Bradley raised his hand. Mr. Bradley got up and he spoke and he was telling Mr. Walsh, you know, he wanted to know what was going to happen to him and his mother and family when Urban Renewal came through. President Walsh told him he didn't know. He said, "Even a dog has to have some place to stay."

At that time President Walsh said something to him. I was the one said, "Let the man talk because he was from John Fitch Way No. 3."

Q You said that?

A I said it.

Q Did the Council President warn you for saying anything like that?

A No, he didn't say anything to me.

Q What happened after that?

A Well, NAACP chanted, "Freedom." They said, "Freedom," and they had their banners and held them up. I also had mine.

Q Are any of these defendants in the NAACP?

A What defendants?

Q These six seated to my right and left.

A Not that I know of.

Q Your knowledge this chant was by the NAACP?

A I'm sure it was.

Q What happened next?

A Right after Mr. Bradley had spoke I think somebody said something, and he said if there be any more interruptions, you know, they'd have to be removed. And somebody in the far corner said, "You know there's been no disruption yet." President Walsh said, "Remove that man."

Q Did you understand by that statement there was a threat there would be disruptions later?

A No. He was right. There hadn't been any disruptions. He hadn't said anything about it.

Q Did you observe Mr. Callender when he was removed from the room by the policeman?

A Yes, I did.

Q Did you see him removed into the hall?

A Yes.

Q What did you do then?

A Well, I spoke right after that. I went to the mike and I spoke, and Mr. Good went out and he came back in and Mr. Hannon went over and talked to Mr. Good and Mr. Hannon came back and told me after I finished speaking they were locking them up. And I asked him for what.

Q Did you go out in the hall?

A Yes, I did.

Q When was that?

A Right after Mr. Hannon told me what was happening.

Q Had you finished your speech then?

A Yes, I had.

Q How soon is that after the police had removed Mr. Callender?

A Oh, I don't know. I say maybe five minutes. It might have been less.

Q Had you observed Mr. Callender when they first removed him -- did you see where they put him down?

A No, I didn't see when they first put him down.

Q When you went out in the hall, will you describe what you saw there?

A Well, when I went in the hall Dave here was in a strait jacket, or something, and I think Mr. Smith weren't there and I think they were taking Herb then.

Q You didn't see all six of these defendants seated in the hall?

A No, because they had taken Mr. Smith first.

Q During the time you were speaking, did you observe Mr. Maziarz when he tried to leave the hall?

A Speaking?

Q Yes.

MR. FOX: I'll withdraw that.

Q Did you observe Mr. Maziarz attempt to leave the hall at any time after Mr. Callender was removed?

A Who is Mr. Maziarz?

Q I believe he is the --

MR. PHELAN: Clerk.

Q -- Clerk of the City Council. Do you know who the Clerk of the City Council is?

A Yes, I've seen him.

Q Did you see him there that night?

A He was there.

Q Did you see him leave the hall after Mr. Callender was removed?

A No, I didn't.

Q Did you observe any of these defendants interfere with anyone trying to leave or enter this meeting hall?

A No, because I went in and out of the door twice. The first time I went I went to see what was happening to them.

Q When?

A This was right after they had been taken out and I came back into the Council meeting.

Q Where were they when you went out the first time?

A They were sitting on the right side of the hall.

Q Would you indicate on that diagram where they were.

A Yes. Herb was still sitting here and there was nobody here. I think he was sitting here and the girls were sitting here (indicating).

Q This was when you went out the first time?

A Right.

Q Did you have any trouble opening that door when you went out?

A No, I didn't.

Q Did you have any trouble going back in?

A No -- Yes, I did. I had trouble going back in because I had to pass Officer Downing to do so.

Q Were the doors closed at that time?

A The doors were closed.

Q You had no trouble opening them and closing them?

A Not the first time I went out I didn't.

Q Did anybody else have trouble?

A Yes. I met Mrs. Walsh, Betty Walsh. She came in and out of that door.

Q Did she have trouble getting in and out?

A No.

Q Did the meeting continue right after Mr. Callender was taken out?

A The meeting never stopped.

Q So despite the incidents described, the meeting continued as it would normally?

A Right, because I spoke right after Mr. Bradley did and it never stopped.

MR. FOX: No further questions.

CROSS EXAMINATION BY MR. PHELAN:

Q Miss McCrea, where do you live?

A In Trenton.

Q Whereabouts in Trenton?

A On East Trenton Avenue.

Q Does it have a number?

A Oh, yes, 120.

Q 120?

A Yes.

Q Are you employed?

A No, not at the time I'm not; no.

Q Are you a member of Core?

A Yes.

Q Do you hold any official position with Core.

A No.

Q Who was in a strait jacket?

A Dave.

Q Dave who?

A I don't know his last name. Mr. --

Q Crittendon?

A Right.

Q The man to my immediate left?

A This man right here (indicating). They had him in a bag or something.

Q Bag?

A Yeah. With some straps across it.

Q This is on November 5th, 1964?

A Right.

Q Where was Mr. Crittendon when you saw him in this bag or strait jacket?

A The policeman was getting ready to take him downstairs.

Q Was he on a stretcher?

A I don't know what it is. He was in this bag and they had him strapped up in this thing.

Q Was Officer Downing there when he was in this strait jacket?

A If I'm not mistaken, I think he helped take him downstairs.

Q Sergeant McDonough?

A I don't know Sergeant McDonough.

Q Do you know Sergeant McKeever?

A No, I don't.

Q How many police officers were present while he was in this strait jacket?

A I'll say at least about seven, because they were in the hall before this ever happened.

Q When you came first out into the corridor there were only five there, right?

A I can't say five of them there. There was seven in the hall before the sit-in occurred.

Q There is no doubt in your mind the five of them were seated on the floor of the corridor, right?

A Are you speaking in the corridor? Mr. Smith wasn't there when I came out of the door the first time, so I assumed they had taken him first.

Q This man Dave or Mr. Crittendon, he was there, right?

A Yes.

Q Was he on the floor?

A They had Mr. Crittendon in a bag I told you.

Q Was he standing?

A No. How can he stand in a bag? They had him laying down.

Q Oh! He was laying down. How about Mrs. Lewis?

A Well, she was sitting squatted with her feet up under.

Q She was seated on the floor?

A With her feet under, yeah.

Q Did she have on a bag or strait jacket?

A No.

Q How about Joyce L. Schurik, do you know her?

A I think so.

Q Is she here in court?

A I believe so.

Q Was she out there in the corridor?

A Yes.

Q Where was she?

A Well, she was sitting down -- All the girls was in a row across the front and they had their feet up under.

Q None of these girls had any bags or strait jackets on?

A He was the only one I seen taken out in a bag.

Q He was the only one in a strait jacket?

A Right.

Q How about Mr. Callender?

A They dragged Mr. Callender out.

Q But he didn't have any bag on?

A No, he didn't have a bag on.

MR. PHELAN: I have nothing further.

MR. FOX: Nothing further, sir.

(The witness leaves the witness stand.)

MR. FOX: Mr. Crittendon.

WILLIARD D. CRITTENDON, one of the defendants, being duly sworn as a witness, takes the witness stand and testifies as follows:

DIRECT EXAMINATION BY MR. FOX:

Q Where do you live, Mr. Crittendon?

A 712 East Sixth, New York City.

Q What is your occupation?

A I'm Secretary of the Northeast Regional Office.

Q Are you a student?

A Not really. I'm taking --

Q I'm sorry.

A -- I'm not a full time. I'm not engaged in school at this time, no.

Q Had you been to school?

A Yes.

Q What is your education?

A High school, two years at Millikin --

MR. PHELAN: I can't hear the witness.

A -- two years at Millikin Conservatory of Music in Illinois, and a year at University of Arizona in Tucson.

Q Your subject is music, is that right?

A That's correct.

Q Are you presently a full time employee or full time worker for Core?

A That's correct.

Q I take it, then, your personal occupation will be musician, is that right?

A That's correct.

Q Did you graduate from a music college?

A No, I have a year to go.

Q On the evening of November 5th you were present at the City Hall in Trenton?

A Yes.

Q Where were you immediately prior to that?

A We were at Mrs. Lewis', I believe.

Q What was the nature of the meeting at Mrs. Lewis' house?

A She was just filling us in on pertinent details of the situation here and telling us --

Q What were you doing in Trenton?

A I talked to Lou that afternoon and he had told me of a situation in Trenton. And he said, "If you're interested," you know, "you can come along."

Q I'm sorry.

A He told me of a situation that was brought to his attention here in Trenton.

Q What was that?

A It was concerning the Urban Renewal Project. He said, you know, "If you're interested you can come along." So I decided to come.

Q What was your function here in Trenton; what were you supposed to do?

A I was just here to come to the meeting.

Q Did you have any plan before you went to that meeting to engage in a demonstration of any kind?

A No, sir.

Q You went to the meeting just as an observer?

A Just as an observer to find out, you know, for ourselves and watch the Council in action and have the various pleas presented so we could get a clearer picture.

Q Were you here to assist the local Core in any way?

A At this time, you know, it was just purely, you know, for a scene and hearing. I hadn't been assigned to it, if that's what you mean, no.

Q Did you observe the speakers on the issue of the Fitch Way Project?

A Yes.

Q Will you describe the nature of the talks that were given on this project and the participation, if any, by the Council and the public?

A Well, as has been stated previously, each person who wishes to speak has to come before the microphone and address the Council on the dais and speak to them. It was a pretty lively meeting. It was clear that there were dissenting opinions and there were opinions for, and it was kind of an electric meeting.

MR. PHELAN: I didn't hear that.

THE COURT: Electric.

THE WITNESS: Electric.

MR. PHELAN: Electric?

THE WITNESS: Electric, yes.

By Mr. Fox (continuing):

Q When you say, "electric and lively," can you describe what you observed?

A I mean it wasn't dull. There was current flowing and wasn't something somebody just came to to be seen there. Some people were involved in what was being said.

Q How could you tell that?

A Previously to this there was some discussion by Mr. Mandel of a park or recreation thing. I'm not sure. I wasn't particularly interested in this and the audience didn't seem to be.

Q I'm sorry. What?

A The audience wasn't particularly interested in it either. There were a few people there interested, brought by some gentleman why he thought this land shouldn't be used for that park. I'm just drawing a comparison here.

Q Then I take it the interest picked up.

A The interest did pick up, yeah.

Q Was there applause, interruption; what was there?

A Well, there was reaction to speeches. When a person would say something, particularly against what the city was proposing, there was scattered applause and very friendly ones, and acceptance of the man's comment.

Q Were these audible throughout the whole hall?

A You could hear them. Some were inaudible, some could be heard.

Q Did the Council participate in these discussions in any way?

A There were interruptions back and forth. There were several people who came and talked to the Council while other people were speaking to the microphone. I saw some of that. There was talk between members of the Council and they were summoning people to and from the council chambers. I mean it wasn't like it was an exodus, but there was movement going on in and around speeches. It seemed to be a very loose and fairly warm meeting.

Q Do you remember the speaker who was on the stand at the time these incidents we have been hearing about today took place?

A You mean the residents from Fitch Way?

Q Yes.

A I remember him being there, yes.

Q Can you describe what happened during his speech, what took place -- what did he say?

A I think Mr. Callender pretty much said it. He was imploring with the Council to see what he considered his situation, to see it better than apparently he thought that they had been. He was telling them while they were saying such and such a thing was possible and plausible, in its benefit to him it was negligible.

Q Did anyone interrupt him during his speech?

A He was interrupted from Council as to make points clear.

Q Describe these interruptions.

A Say, "Repeat, repeat that. Could you make that more clear?" I think -- I guess it would be a conclusion on my part, but I think what they wanted was him to present himself in a more lucid manner than they thought he was doing. I thought he was perfectly clear.

Q Where were you seated at this time?

A I was in the Section 1 that was drawn on the previous thing.

Q Were you next to Mr. -- the defendant Callender?

A Yes, either next to him or a seat away from him.

Q Did you lock arms with him at any time?

A I didn't lock arms with Herb, no. You mean bend both arms being connected? No.

Q Did you do that?

A No.

Q Did you do anything like that?

A No. I maybe touched his shoulder. That certainly couldn't be construed as locking arms.

Q When did you touch his shoulder?

A I believe just after Officer Downing first came and departed. When I touched his shoulder he didn't pay any attention and I withdrew.

Q Did you attempt to prevent Officer Downing or anyone else from removing Mr. Callender from the room?

A No. I didn't see anyone else.

Q Did you hear Mr. Callender make the remarks that have been attributed to him today?

A Yes.

Q You heard him then say, "You haven't seen anything yet"?

A Yes, something to that nature.

Q Had any activity, either on his part or yours, indicated to you that he or members of your group or anyone else was about to create a disturbance?

A Would you repeat that, please.

Q Did anything before that that happened by anyone in the audience indicate to you a disturbance was going to take place?

A No, nothing that I would call a disturbance.

Q Did you understand those remarks to be a threat by Mr. Callender that there would be a disturbance?

A No.

Q After Mr. Callender was removed from the room, what did you do?

A Well, I kind of watched him go over the top of the chair and I kind of turned around a little bewildered and everybody was getting up and turning around. This thing about chanting, I wanted to clarify it. It sounded like we were in a concert in a choir singing, "Freedom; freedom." I want to make it clear this was not any such concert of voices or chants, anything like this. It was a thing people said, completely uncoordinated. No one was responsible for someone else's statement.

I myself said it almost inaudibly. I could hardly hear myself say it. I'm not sure what's being made of this. Anyway I saw Herb go out the door. Lou started to make motions to go with him, so I went out to see what happened. So I picked up my coat and went out.

Q When you went out the door, did you observe the defendant, Herb Callender -- where was he?

A He was against the wall, away from the door.

Q Was his position against the wall consistent with his position demonstrated on that diagram?

A Yes.

Q He was placed down when the door were fully open?

A Yes.

Q He was placed in such a spot he could not interfere with the opening and closing of the door, is that right?

A No one would be hindered from entering or leaving.

Q Could you describe the positions of the rest of you?

A The same as this diagram. Lou was beside Herb, I was beside Lou.

Q About how many feet would you say you were from the entrance of the hall?

A It's hard to say. Seven or eight feet possibly.

Q Did you or any of the girls in front of you have their feet in such a way as to block anyone who wished to come in and out of that passageway?

A No. I would not say that because, as has been said before about four or five times, when the girls sat down they had their skirts on and tucked their legs underneath them and had their backs to us. After we locked arms, we did, I'm not sure whether the girls did or not. They'd have to answer that themselves. In the pulling apart it's obvious people were all across the corridor.

Q Did you notice anyone who had trouble getting in or out of that meeting room?

A Pardon? No, I didn't. I do remember Mr. Good coming out a couple times -- I remember him well -- and I remember the exchange with the Safety Director who somebody said was the Safety Director.

Q Did you observe people who came out?

A People with curiosity. I think there's some stairs lead off the entrance, people coming out of offices, coming in late to the meeting coming through.

Q Did these people have any difficulty getting in and out?

A I don't believe so.

MR. FOX: Your witness.

CROSS EXAMINATION BY MR. PHELAN:

Q Do you live with --

A That's correct. Lou and I share an apartment.

Q -- with Mr. Smith?

A That's right.

Q You say you weren't assigned to this particular meeting at the City Hall on November 5th?

A Correct. No one officially designated me to go.

Q You said, as I recall your direct testimony, you were there purely for a scene and not assigned.

A I went of my own volition. It was, you know, like, "Do you want to go? Are you available?" So I said, "Yes, I can go," and I came.

Q Is that what you mean by, "purely for a scene"?

A I said I came here to see and to hear the meeting. I attended the meeting, if that makes it clear.

Q Tell me, did they place you in a strait jacket?

A Cadapler's (phonetically) jacket. I know. It surprised me, too. I thought it was interesting.

Q Then you weren't in a strait jacket, were you?

A Well, it's a strait jacket in like it's a psychiatric thing because they strap you in to prevent your arms from flaying. So you haven't much movement.

Q Did the police put this on you?

A Yes.

Q You were the only one?

A Yes.

Q Do you know why they put it on you?

A No. It was really kind of amusing if you allow me, because they came over and they had the thing and didn't know what to do with it. They saw me and it was long and I was tall. They said, "Maybe he'll fit." So that's the way it was.

Q You put this jacket on?

A No, they put it on. I didn't put it on.

Q Did you give them any reason -- were you violent?

A No. I just sat there.

Q You just sat there with your arms locked. Did you get the feeling of strength, too, like was testified to?

A Let's not make some big philosophical thing.

Q I'm asking.

A I'm just saying we did it. And it is true what he said, but what you're trying to do isn't.

Q I am just asking the question.

A All right. It gives me strength.

Q It was after that they had to place this jacket on you?

A After? Wait a minute. After I locked arms.

Q They had to break your arms apart?

A Yes. It wasn't much effort, yes.

Q Did anyone ask you to leave voluntarily?

A When I came outside the door I was standing watching. I don't know which officer it was. It may have been Officer McDonough. I'm not sure. He said, "Are you in or out?" And I just kind of looked at him. I didn't even answer him. I just kind of said to myself, "I guess I'm in." That was the last contact I had with the police officer speaking to me directly until we got to the Police Station. In the elevator going down, and I'm already wrapped up like this, a couple officers kind of smiling and saying, "It would have been a lot easier if you walked." I'm already there.

Q Were you on a stretcher?

A Yes, in the cadapler's (phonetically) thing.

Q He said it would have been a lot easier if you walked?

A Yeah. That's kind of a post-mortem as I'm already in the thing going down the elevator. What good does that do?

Q They never afforded you the opportunity to accompany them without any force whatsoever?

A What are you talking about force?

Q They had to forcibly eject you from this building, didn't they?

A Forcibly eject to my mind --

Q You didn't leave on your own volition?

A Right.

Q Do you understand that question?

A Yes, I understand that.

Q You didn't leave on your own volition?

A That's correct.

Q They had to forcibly eject you?

A Yes.

Q And all your companions, is that correct?

A Insofar as I know I think some people walked part of the way. I'm not sure. I'm just talking about my own case. I'm giving you the opportunities I was afforded and what I could make out of it.

Q Were you present when Callender attempted to get up from the floor?

A It seems to me I saw it, but it's not really in my mind.

Q You don't know?

A I'm not sure.

Q You're not sure?

A Yes.

MR. PHELAN: I have nothing further.

(The witness leaves the witness stand.)

MR. FOX: Joyce Schurik.

JOYCE L. SCHURIK,

one of the defendants, being duly sworn as a witness, takes the witness stand and testifies as follows:

DIRECT EXAMINATION BY MR. FOX:

Q Miss Schurik, you recall being outside the City Hall Chamber on November 5th after or at the time the co-defendants were outside, do you not?

A Yes, I do.

Q Do you remember where you were seated at that time?

A Yes, I do. I was sitting right here (indicating), across the way from Mr. Crittendon.

Q Were the other defendants seated pretty much where those circles indicate they were seated?

A Yes, they were. We were lined up in this manner.

Q I take it when they were there the doors -- when they were first put there the doors were fully open?

A Yes, they were.

Q They were later closed; the doors were closed. Did they in any way interfere with anyone coming in and out of that room?

A No.

Q Did anyone you observed have any difficulty coming in and out of there as a result of where you and your friends were located?

A No. I saw Mr. Good walk in and out a few times without any difficulty.

Q Did the police ask you to leave from that spot?

A No, he did not.

Q Did the police take you from that spot?

A Yes, I was dragged out.

Q Did you walk voluntarily to any extent from where you were to outside?

A Well, I walked voluntarily from the chambers out into the corridor.

Q I mean from the time you were there, did you walk away or were you dragged out of the building?

A Yes, I was.

MR. FOX: Your witness.

CROSS EXAMINATION BY MR. PHELAN:

Q Where do you live?

A 1541 Metropolitan Avenue, that's in New York City.

Q 1541 --

A Yes.

Q -- Metropolitan Avenue?

A Yes.

Q Are you a member of Core?

A Yes, I am.

Q For what period of time?

A For a year.

Q A year. Do you hold any official title?

A No, I do not.

Q Are you employed?

A At the moment I am not.

Q Were you employed in November?

A I was a college student.

Q A college student. What is your educational background?

A I've had a year and a half at Bronx Community College.

Q What college?

A Bronx Community College.

Q Bronx Community. What are you studying?

A Excuse me?

Q What is your major?

A Science.

Q Were you assigned by Core to this Trenton meeting on November 5th, 1964?

A No, I was not officially assigned.

Q Just came over voluntarily?

A Well, you see, I'm a member of the Housing Committee and I came to learn about Urban Renewal and the situation here.

Q Were you one of the groups in the City Hall Chamber who echoed, "Freedom; freedom"?

MR. FOX: Your Honor, I object at this time. I confined my direct examination to simply what happened outside the chamber and not what happened inside. It seemed to me this would be improper cross at this time.

THE COURT: All right. I'll sustain it. I've already dismissed the complaint regarding that.

MR. FOX: Anyway that has been disposed of.

By Mr. Phelan (continuing):

Q Did you leave the chamber immediately after Callender was removed?

A Well, I don't know what you mean by, "immediately," but I did get up and went out with the group.

Q Did you know Mr. Callender before?

A Yes. I've known him for over a year.

Q Over a year. When you came out in the corridor, what did you then do?

A Well, at first we were standing there for a moment and --

Q Where was Callender?

A He was sitting down on the floor by the wall with his knees, I think, up to his chest, and then he began to -- Mr. Smith walked over to him and he began to rise. I'm not sure which officer it was put his hand on his shoulder as if, you know, stay down. And then we all sat down.

Q Flopped down in the corridor?

A We all sat down, yes.

Q Right then and there in unison?

A Practically, yes.

Q Did you lock your arms with the other girls?

A No, I had my arms in my lap.

Q What was the purpose in sitting down, your purpose?

A My purpose? Well, I was concerned about Mr. Callender. I mean going to jail -- you know, I didn't know what they were going to do to him alone and we felt better --

Q You.

A Yeah. I felt better going with the group as a group, sitting there.

Q Did it mean anything to you to sit down in the public corridor outside the Council meeting?

A Yes. I was exercising my constitutional right of freedom of speech, just sit down there.

Q By sitting down?

A Yes.

Q That's exercising your right of free speech?

A Yes, it is.

Q In other words, you were demonstrating against police authority, weren't you?

A I was not demonstrating or protesting.

Q You were just exercising your constitutional right?

A Yes.

Q And you felt you could sit there?

A Yes, because I was not interfering with anybody else's rights.

Q And did you think -- did that mean to convey a message by your sitting there?

A I don't believe so.

Q You don't believe so?

A Everything was happening so fast before I knew it I was being thrown into a paddy wagon.

Q There was a lot of confusion going on?

A Police running around and whatnot.

Q But none of them asked you to leave?

A No, they did not.

Q In fact before you spoke to any of the officers you immediately sat down in that corridor, didn't you?

A The officers and I at no point exchanged words.

Q At no time?

A At no time except when I was told what my bail was.

Q So that even though you weren't involved in this, you had to sit down in the corridor because you thought you were helping Herb, is that it?

A What do you mean I wasn't involved?

Q The officer hadn't said anything to you; you weren't under arrest, were you?

A No, I was not under arrest.

Q You came out of the chamber on your own volition?

A That's correct.

Q And then you sat down in the corridor?

A Correct.

Q Right?

A Yes.

Q The three girls. Nobody said a word to you?

A That's right.

Q I am asking you why you did that.

A I explained to you why.

Q You knew the police were having trouble with Callender, didn't you?

A What do you mean having trouble?

Q They had to remove him forcibly from the chamber, you knew that, didn't you?

A They chose to drag him out of the chamber, yes.

Q That's the only way they could get him out of there?

A Perhaps if they asked him to get up he might have.

Q You don't know whether they asked him or not?

A To my knowledge they did not.

Q Where were you seated with respect to Callender?

A I believe I was about --

MR. FOX: I object again. I think again the direct examination is simply --

THE COURT: I'll overrule your objection. The reason why I sustained it before because it related to freedom and I already dismissed the complaint. I think it is perfectly valid -- this is cross-examination -- to find out what happened.

A I believe I was about four seats away from Mr. Callender.

Q You don't know what Officer Downing said to him, do you, if anything?

A Saw Officer Downing walk up to Mr. Callender and say to him something about, "Are you the one? Are you the one causing trouble?" Mr. Callender did not say a word. He sat there looking forward, and then I saw him walk away. At no time did he say, "Will you come with me?" or anything of that matter.

Q You never heard him say that?

A No, I did not.

Q So after Callender was dragged out, as you say, to the corridor, you then got up and you left?

A Yes, I did.

Q Did you leave with anyone or all by yourself?

A Well, I didn't leave by myself. It was almost as if -- we all just got up at once with our eyes on Mr. Callender watching him being drug out. We all walked out.

Q Did you meet at Mrs. Lewis' house prior to this meeting?

A Yes, I did.

Q Did you have any prearranged plans for sitting down if something happened?

A No, we did not.

Q Isn't that the general policy of Core?

A No, it was not because we were just there to sit and listen and see what was going on. We had no intention of doing anything actively ourselves.

Q Who first suggested to you that you sit down?

A No one suggested anything about sitting down. It's something that just happened. At the time there was nothing prearranged.

Q Did you sit down before Mrs. Lewis?

A I don't remember who sat down a second before who.

Q Were the three men seated first?

A Well, yes. Mr. Callender, of course, was sitting down and then Mr. Smith came. Then before I knew it all of us were on the floor.

Q All of you were on the floor?

A Yes.

Q They didn't put any strait jacket on you, did they?

A No, Mr. Crittendon was the only one.

Q Did they have to use a stretcher in order to remove you?

A I'm not six feet tall like Mr. Crittendon.

THE COURT: Answer the question. It is a simple question. Did they have to use a stretcher?

A No, they did not.

MR. PHELAN: Nothing further.

REDIRECT EXAMINATION BY MR. FOX:

Q Miss Schurik, when you saw Herb Callender taken out, you felt his rights were being violated, didn't you?

A Yes, I did.

Q Did you understand the statements that he made before the City Council to be a threat of future demonstrations?

MR. PHELAN: I'll object to that. That's asking the witness to draw a conclusion.

MR. FOX: I'll withdraw it.

Q What meaning did the statement that Mr. Callender made, "We haven't done anything yet," convey to you?

A That he was telling the Chairman that, "You are wrong to think we have disrupted or caused any disturbance."

Q When you left the room you have testified, I believe, you felt a wrong had been done.

A Yes, I did.

Q When you sat down outside, what was the purpose of that sitting down?

A The purpose of it was that we should be together with Mr. Callender, because I mean the way he was drug out and everything we were kind of concerned about him, his physical well-being

Q You sat down because of your concern with regard to the treatment accorded to Mr. Callender, is that right?

A Yes. Besides I've always been taught since I joined the movement, that we've done things together as a group.

Q But there was no plan before you came to this meeting to have a physical protest of any kind at this place?

A No. I just had a little placard I put on the seat next to me. That was it.

MR. FOX: That's all.

RECROSS EXAMINATION BY MR. PHELAN:

Q What do you mean you were always taught to do things together?

A When a new member joins they go through an orientation where they are taught the methods of non-violence and how to protect themselves in case they are attacked and the philosophies, and that's what I meant when I said that.

Q You weren't attacked, were you?

A No, I was not. No, I'm just using an example to explain.

Q There was no need for you to demonstrate to protect yourself, was there?

A Oh, no. I never said I was.

Q It was just out of sympathy for Callender?

A I think concern is a better word.

Q Well, I'll use your word. It was concern for Callender and that's the reason you sat down?

A (The witness nods in the affirmative.)

MR. PHELAN: That's all.

THE COURT: I have one question.

You say you were concerned with the wrong. What did you mean by, "wrong"?

THE WITNESS: Well, I mean like he had not done anything to disturb the meeting, and when he just quietly, and he did not scream, he said it audibly, he said what it amounted to, "I have not caused any disruption or disturbance," he was thrown out. He was accused of something and he was answering to this and was thrown out for it.

THE COURT: Then he was asked by the Chairman of the meeting to leave? Did you hear what Mr. Walsh said?

THE WITNESS: Mr. Walsh said if there were any more disruptions, looking straight at Mr. Callender, "I will have you evicted."

So Mr. Callender said, "There has been no disturbance." He felt he was being accused of disrupting the meeting and he said, "There has been no disruption yet," and found himself being drug over the chairs.

THE COURT: Did Mr. Walsh say anything as to that following the statement, "There has been no disruption yet"?

THE WITNESS: Well, then Mr. Callender was drug out and truthfully I don't know what went on in the meeting.

THE COURT: The testimony was Mr. Walsh said he specifically asked the officer to remove Mr. Callender. Did you hear him say that?

THE WITNESS: Yes, I did. He told Patrolman Downing to, "Please evict that man."

THE COURT: That's what I asked you. Thank you.

(The witness leaves the witness stand.)

MR. FOX: Miss Amis.

MARVA L. AMIS, one of the defendants, being duly sworn as a witness, takes the witness stand and testifies as follows:

DIRECT EXAMINATION BY MR. FOX:

Q Miss Amis, where do you live?

A 4285 Leidy Avenue, Philadelphia, Pennsylvania.

Q What is your occupation?

A At present I'm a task force worker here in Trenton with Field Secretary Herb Callender.

Q What is your educational background?

A High school education.

Q Did you go to high school in Philadelphia?

A Yes.

Q You are a member of Core, I take it.

A Yes, I am.

Q On the evening of November 5th did you meet at the home of Mrs. Lewis prior to attending the City Council meeting?

A Yes, we did.

Q What was the purpose of your being present at her home and later at the meeting?

A Well, Mrs. Lewis was having a little difficulty on the problem here concerning Urban Renewal, and since Urban Renewal is a whole brand new field as far as civil rights is concerned and protesting the rights of people being affected by Urban Renewal, we were very much interested in what was going on in the city and how, you know, we could perhaps come about to some solution, assuring that people get equal rights under Urban Renewal.

Q Were you here to assist the local people in this?

A That's right.

Q Did you at that time at the home of Mrs. Lewis have any discussions with regard to a planned demonstration or disruption of a meeting?

A No. The point of going to this meeting was for observation to find out what was going on.

Q Did you then go to the meeting?

A Yes.

Q Where were you seated?

A On the far left-hand side a couple of rows from the front.

Q Did you observe Mr. Callender at the time the President of the Council asked the patrolman to remove him, did you notice him at that time?

A Well, after Mr. Walsh said, "Remove that man," I turned around and I saw the officer come over to Mr. Callender.

Q Did Mr. Crittendon at that time, or at any time inside the Council room, lock arms with the defendant, Herb Callender?

A No, I did not see this.

Q Did you observe Mr. Crittendon and Mr. Callender from the time that the Council President asked that Mr. Callender be removed until the time he actually was removed?

A You mean both people?

Q Did you observe Mr. Callender?

A Mr. Callender for a period of time, yes.

Q During this time of your observation there was no locking of arms?

A No.

Q Did you, yourself, join Mr. Callender outside?

A Yes, I did.

Q What was your position?

MR. FOX: I'll withdraw that.

Q Was your position when you sat down outside identical with the position that has been previously described by the co-defendants?

A Yes.

Q I take it that is the same as the position on the piece of paper over there.

A Precisely.

Q You were then seated in front of one of the three men who had their backs to the wall?

A Yes, I was.

Q Which one of those circles was you -- were you first?

A I was sitting directly in front of Mr. Callender.

Q That would mean you were closest to the door of all the women?

A That's right.

Q Would where you were seated in any way interfere with opening and closing the door?

A No, we did not.

Q Did you at any time interfere with anyone who came in and out of that hall?

A No, I did not.

Q Did anyone interfere with anyone coming in and out of that hall among the six defendants?

A No.

Q Did you notice the Clerk of the Council when he left the hall?

A No, I didn't notice anyone in particular except Mr. Good because he was a little loud and, you know, he was talking to the Director of Public Safety. But there were people in the meantime leaving and entering the chamber.

Q During the course of the meeting inside the hall, I take it that you heard Mr. Callender make a remark to the effect, "We haven't seen," or, "You haven't seen anything yet," is that right?

A Yes.

Q Had there been any to your observation, had there been any unruly noise on the part of anybody at that meeting up to that time?

A No, not at all.

Q Did you understand these remarks were a threat on the part of Mr. Callender or anyone else to disrupt the meeting?

A No, I took it as no threat. Up until then the meeting had been, you know, rather noisy. There was a lot of talking and whispering because the subject was a controversial one. And, you know, there were applause and so forth.

Q There was applause during the meeting?

A Yes, there were.

Q When did this take place?

A Oh, I think right after the spokesman for the NAACP got through they sort of applauded and raised their signs and so forth.

Q The NAACP applauded when people spoke from their group?

A Yes.

Q Did they make any audible remarks other than applause from the floor?

A Audible, yes, but I couldn't discern what people were saying precisely.

Q They did say things?

A Constant conversation throughout the hall.

Q Did they direct remarks to the speakers?

A No, not in particular.

Q Did anyone at any time ask you to leave from where you were in the hall?

A No. I was not asked to leave.

Q Did anyone place you under arrest?

A No. I just got carted away.

Q They carried you away?

A Yes.

Q You did not walk of your own free will then.

A No.

MR. FOX: That's all. Your witness.

CROSS EXAMINATION BY MR. PHELAN:

Q Miss Amis --

A Yes.

Q -- by whom did you say you were employed?

A I'm not employed. I'm a volunteer.

Q For Core?

A Yes.

Q You say you live here in Trenton now?

A I do now, yes.

Q Whereabouts in Trenton?

A 63 Fountain Avenue.

Q But at the time of this incident you were a resident of Philadelphia, is that correct?

A Yes.

Q You knew all your fellow defendants prior to November the 5th?

A I knew most of them, not as well as I would say I know them now.

Q With relation to Callender in the City Hall Chamber, where were you seated?

A In the chamber? About five or six rows in front of Mr. Callender.

Q In front of him?

A Not directly in front, but in that row.

Q Did you hear the President speak from the dais and say, "Officer Downing, remove that man"?

A I did hear Mr. Walsh say that.

Q Did you see Mr. Callender slump down in the seat?

A No. I turned around for a second when Officer Downing walked over to him and then I turned back around faced the podium.

Q Callender didn't go voluntarily, did he?

A No.

Q He had to be removed?

A Yes.

Q After he was removed, what did you then do?

A I then got up and went out into the corridor.

Q Did you immediately sit down?

A Not immediately, no.

Q Did you stand in a group?

A We stood for a few minutes, I would imagine.

Q And there was Smith, Crittendon --

A Were they standing also?

Q Were you?

A They stood for a matter of seconds or no more than a couple of minutes and they sat down.

Q Officer Downing and Sergeant McDonough were there at that time, right?

A That's right. But Mr. Smith and Mr. Crittendon were in the hall before I had arrived. They had been there, I would say, for --

Q You came out after?

A Right.

Q Shortly after?

A Shortly after, yes.

Q Were the other young ladies there?

A I think they followed me. I'm not sure.

Q They followed you. Do you know whose suggestion it was to sit down?

A No, I don't. It probably wasn't anyone's suggestion. It's more of an act of solidarity when one sits down with one's fellow.

Q Is this common?

A Yes, it is common. It has been learned through experience that you know when one person is put under arrest, this is mainly pertaining to southern regions, that when left alone with police officers they have been known to be brutally beaten and mentally damaged or physically damaged in some way, and it is always been a practice of Core people or people of non-violence to accompany or assist or stay with the person once, you know, put under any restraint by police officers.

Q Was there any threat of violence here on November the 5th?

A I'm not saying that there was a threat of violence. I'm saying that anything out of experience, anything could have happened to Mr. Callender once taken out of that room by police officers or anyone else, and it was just an act of solidarity.

Q Not defiance, solidarity?

A Right.

Q Did you sit down before the other two?

A Before which other two? I don't know. I think we all sat down about the same time.

Q Did you say anything to the other two girls?

A No, not anything outstanding that I can remember.

Q Did they say anything to you?

A I don't remember.

Q Was there any conversation? You just didn't stare at one another, did you?

A If there was there was very little.

Q Did you just look at one another and then plop down in the corridor?

A This is a decision you make on your own whether you're going to do it or not, and it's an act that automatically follows usually for most people who are committed to something such as this.

Q Is it a planned act?

A A planned act? No. This was not planned.

Q Well, the act of sitting down?

A Mr. Callender had been placed in a position and he was not -- he was told not to move from it.

Q Who told him that?

A And because of this --

Q Who told him that?

A A police officer.

Q What police officer?

A Officer Downing from what I gather.

Q Did you hear him?

A I didn't hear Officer Downing.

Q Then you don't know if he was told.

A No. It was a police officer and he was the only one there so I imagine it was him.

Q You didn't hear Officer Downing say a word to Mr. Callender, did you?

A No, I didn't.

Q You didn't see Officer Downing do a thing to Mr. Callender, do anything to him in that corridor?

A Yes.

Q What did he do?

A He stood over Mr. Callender and pushed him down.

Q He pushed him down?

A Yes.

Q And you witnessed that?

A Yes, I did.

Q And who else was there when this occurred?

A All of us were there, I imagine.

Q They were all there now?

A Yes.

Q Were you seated at that time?

A No, I wasn't.

Q Where was Mr. Smith?

A Mr. Smith was standing also.

Q So the only one that was seated at that time was Callender?

A That's right. And this is why we all sat because Officer Downing wouldn't let him up.

Q Have you talked to Officer Downing since the night of November 5th?

A No, I haven't.

Q Do you know if any member of the Core organization has attempted to talk to Mr. Downing?

A No, I don't.

Q Were you present when Crittendon had a jacket on?

A Yes.

Q Did you see them place that on him?

A I think I remember.

Q Did Officer Downing do that, too?

A I don't remember which officers did it.

Q Did the police officers ask you to leave voluntarily?

A No, they did not. Nothing was said to me.

Q Nothing was said to you?

A No.

Q Were you one of the individuals that had to be removed by stretcher?

A No, I wasn't.

Q Carried out?

A I was dragged out, yes.

Q Dragged?

A Yes.

Q By one or two officers?

A Two officers.

Q It wasn't your desire to leave voluntarily, was it?

A No.

Q The only way you would remove was by force?

A As far as they were concerned I would imagine it was force.

Q That is the only way you were going to leave that building?

A Passively.

Q Passively.

MR. PHELAN: Nothing further, your Honor.

MR. FOX: I just have a few questions.

REDIRECT EXAMINATION BY MR. FOX:

Q When you sat down you said you did so out of a feeling of a need to create sympathy or solidarity with Mr. Callender, is that right?

A Yes.

Q Did you do this, too; did you feel --

MR. FOX: I'll withdraw that.

Q Did you feel a wrong had been done Mr. Callender?

A Yes.

Q Were you also then sitting down as a protest against that?

A Yes.

MR. FOX: That's all, sir.

(The witness leaves the witness stand.)

THE COURT: How many more?

MR. FOX: One witness, sir, and

one more defendant. I think they will both be relatively brief.

THE COURT: One more defendant or one we already heard from?

MR. FOX: No, one we have not heard from and one witness.

MR. PHELAN: Then we will have rebuttal, your Honor.

THE COURT: I dislike inconveniencing anyone, but it may go longer than we can anticipate.

MR. FOX: I can promise mine won't take longer than ten minutes.

MR. PHELAN: Your Honor, it is five after four now. I'd just as soon continue this tomorrow morning.

MR. FOX: If I may say, sir, I wonder how long your rebuttal will take.

MR. PHELAN: Officer Downing back on, Sergeant McDonough.

MR. FOX: How long do you think that will be?

MR. PHELAN: Ten, fifteen, twenty minutes.

MR. FOX: I could say a half-hour

more of testimony.

MR. PHELAN: It is five after four, Mr. Fox.

MR. FOX: I know, sir.

THE COURT: I dislike doing it, but I have this schedule. I thought it would start at ten o'clock today until tomorrow at one. I have another case scheduled at two. I was hoping we could finish. I'm sorry inconveniencing the defendants, but I don't see really how we can continue now. These things have a way of taking longer than the usual or expected ten minutes.

We'll start promptly at 9:30 tomorrow.

(Whereupon, the Court, at 4:05 P. M., on Monday, February 8, 1965, adjourned to meet at 9:30 a.m. on Tuesday, February 9, 1965.)

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February 9, 1965

Time: 9:50 a.m.

(Counsel present.)

(Defendants all present.)

MR. FOX: Ready?

THE COURT: Yes.

MR. FOX: Mr. Matthews.

JAMES A. MATTHEWS, called as a witness by the Defendants, being duly sworn, takes the witness stand and testifies as follows:

DIRECT EXAMINATION BY MR. FOX:

Q What is your name, sir?

A James A. Matthews.

Q Where do you live?

A 23 Short Street, Trenton.

Q Did you attend the meeting of the City Council of Trenton on November 5th?

A Yes.

Q Are you a member of any group that you attended with?

A Well, I am a member of NAACP, but I was there as an interested person.

Q What were you interested in, sir, the issue that was discussed that night?

A Yes, sir. Previous to that evening at our last meeting we were told of the meeting of City Council on John Fitch Way 3, and in support of the project we were asked to come.

Q Do you recall the speakers on this issue?

A Well, there were several speakers throughout the meeting.

Q Can you describe the reactions, if any, of the audience or the members of the Council or President of the Council to the statements made by the speakers?

A Well, sir, I'd have to say that because of the issue at hand, I would say that this particular meeting to me was an ordinary meeting that any person of concern would be interested in and throughout the meeting voices could be heard, the people, throughout the entire meeting people were chatting from time to time.

Q Where were you seated?

A I was seated the extreme right-hand corner, the last seat as you enter the Council room, the first seat as you enter the Council.

Q I take it that's the back of the council chamber then, is that right?

A Yes, sir.

Q Do you remember when the President asked an individual in the Council be -- in the chamber be removed from the chamber?

A Yes.

Q Did you notice where that individual was seated?

A The gentleman was seated diagonally across from me to the right of the chamber.

Q Do you remember any remarks of the President to the audience immediately prior to that statement to this gentleman?

A I believe a statement was made not verbatim what was stated that evening, to me, it would be quietness and so forth. I mean it was brought to his attention that I guess the meeting was becoming a little noisy or something of that nature.

Q Do you know Herbert Callender seated to my left?

A I know him now, as of now, but prior to this time, no, sir.

Q Do you remember seeing him at the Council meeting that night?

A Well, sir, the only thing I can say he was the gentleman whom I saw sitting to the extreme right.

Q Did the police do anything after the President asked Mr. Callender be removed?

A Well, the first thing that I noticed after Mr. Walsh made the statement to remove that man, first Patrolman Downing walked over to that section and afterwards I'd say for about, oh, a few seconds he remained there and then he looked back towards where I was sitting where the sergeant were standing, then the sergeant immediately walked over where Patrolman Downing was standing and as the sergeant walked over the next thing I noticed they had begun sort of lifting Mr. Callender from the seat.

Q Did you observe where he was taken?

A Yes, sir.

Q Where was that?

A He was taken immediately outside the door alongside the wall. There are two doors, the chamber door closest at this point and then there's another door. There's a door to the right and he was placed beyond the door against the wall.

Q Is that where the police put him?

A Yes, at the time when I noticed it.

Q You were inside the chamber at that time, weren't you?

A Yes, sir.

Q What caused you to notice this?

A Well, by the mere fact I was sitting in the end seat and the door was opened, well, being concerned and after having seen a person drug by, I was interested and I just politely turned to my right and watched.

Q Did you see the other defendants who are seated to my right and left on that evening?

A Yes, sir.

Q Did you see them in the hall?

A Yes, sir, I saw them in the hall.

Q What did they do after they left the chamber and entered the hall?

A Before the door was closed I noticed after the group had gone on the outside they were seated, the men were against the wall and the women were facing the men.

Q Did they in any way interfere with anyone coming in and out of that chamber room?

A To the best of my knowledge I saw two or three persons go in and out of the room and with no interference whatsoever.

Q Was there any interference with the opening and closing of the doors on the part of these defendants?

A No, not that I recall because the doors remained open for quite sometime until another officer closed the door, and I would say that was about anywhere from five to ten minutes.

Q What did you do during all this time?

A Well, I yet remained on the inside of the Council room.

Q Did you remain in there until the meeting was over?

A Yes, sir.

Q During the time --

MR. FOX: I'll withdraw that.

Q At the time the President, Mr. Walsh, asked Mr. Callender be removed and shortly thereafter, was the meeting interrupted in any way?

A Well, to the best of my knowledge the only interruption I could see or would state would be only momentary during the time Mr. Callender was drug from the chamber room.

Q Was that interruption any longer than the interruption that took place when Mr. Walsh asked the Council in general to be -- asked the audience in general to be less noisy?

A Well, I would say it could be equal because having your eye on this and noticing this and then this gentleman being drug out and the speaker speaking and watching the other people in the Council chamber, as far as the time element I couldn't exactly state, but to me it all would be equal.

MR. FOX: No further questions.

CROSS EXAMINATION BY MR. PHELAN:

Q Where do you work, Mr. Matthews?

A Naval Communication Unit, West Trenton.

Q Are you a member of Core?

A No, sir.

Q What first drew your attention to the defendant, Callender?

A After Mr. Walsh made the statement, "Remove that man," then I looked over to my right and that drew my attention to him.

Q The order of Mr. Walsh, President of the City Council --

A Yes, sir.

Q -- which was directed to Officer Downing to remove Callender from the audience was clear, wasn't it?

A You mean it could be heard?

Q Very audible?

A Yes, because he was speaking through a mike.

Q Very distinctly, I mean there was no question about what was ordered to be done?

A No, I wouldn't say, because speaking over the mike it was clear.

Q Did you continue to watch Callender?

A Yes, sir.

Q Did he slouch down in his seat like was described here before by witnesses?

A Where I --

Q That is a yes or now answer now, Mr. Matthews.

MR. FOX: I don't think so.

A My reason --

MR. FOX: You asked the question about slouching down. If he wants to he can explain.

THE COURT: All right. Let him answer.

A (Continuing) My reason why I didn't say yes or no, sir, because sitting on the end chair and looking directly over say the officer in the room there, unless I stood up I would not see actually what was going on over there, and by the heads and so forth I could not see clearly over there.

Q So of your own personal knowledge you don't know whether or not Callender slouched down in his chair or not?

A I do not know because I did not stand up to see.

Q Did you continue to watch the entire proceedings from your seat?

A Yes, sir.

Q That took place out in the corridor?

A Until the door was closed.

Q Until the door was closed?

A Yes, sir.

Q Did you see Callender seated on the corridor floor?

A Yes, sir.

Q Did you see Williard Crittendon seated on the corridor floor?

A Well, here again, sir, only by recognition of having seen him that night. By name I don't know the gentleman by name.

Q The gentleman next to me, my left, his name is Williard D. Crittendon. I ask you did you ever see him before?

A Oh, no, sir, not prior to that night.

Q That night did you see him?

A Only in the Council room.

Q Did you see him out in the corridor?

A Yes, sir.

Q What position did you first see him?

A As was stated a moment ago, after the group -- after Mr. Callender was taken from the Council room the others went on the outside and the door being open the men seated themselves against the wall.

Q Was Crittendon one of them?

A Yes, sir, I have to say so if he was one of the three men that night.

Q Mr. Smith seated right next to Mr. Crittendon at counsel table, was he one of them?

A I'd have to say yes.

Q The three young ladies directly in front of me -- Joyce L. Schurik, Marva L. Amis and Mrs. Lewis --

A Yes, sir.

Q -- were they all seated on the corridor floor leading into the council chamber?

A Yes. They were facing the gentlemen.

Q They were seated?

A Yes, on the floor.

Q On the floor?

A Yes, sir.

Q Did you see the police officers arrive?

A If I recall some officers were already there because prior to the opening of Council to the right where the officers usually are seated I can recall Mr. McBride being there --

Q Mr. McBride being the Commissioner of Public Safety?

A Yes, sir, and I can recall two other officers I've seen throughout the city.

Q Officer Downing was there?

A At the time I saw Officer Downing he was standing at the door and also the sergeant next to Officer Downing was standing at the door.

Q Did you witness any attempt on the part of Callender to get up from the floor?

A No, sir. If this was done it was done after the door was closed, because I did not see them when they were removed.

Q You didn't see anything of that?

A No, sir.

MR. PHELAN: Nothing further.

MR. FOX: That's all.

THE COURT: I just have two questions. After the six people were in the hall, how long did the doors remain open?

THE WITNESS: I would say, sir, the doors remained open at least anywhere from five to ten minutes because I can recall, if I may answer, Reverend Woodson and Mr. Graham and Good and Mrs. Jones going in and out, I mean after this incident had taken place. They did not close immediately.

THE COURT: And you say several people left the meeting to go out?

THE WITNESS: Not immediately.

THE COURT: During the five or ten minutes?

THE WITNESS: Yes, sir, I would say so.

THE COURT: All right.

(The witness leaves the witness stand.)

MR. FOX: Mrs. Lewis.

LILY R. LEWIS, one of the defendants, being duly sworn as a witness, takes the witness stand and testifies as follows:

DIRECT EXAMINATION BY MR. FOX:

Q Mrs. Lewis, where do you live?
A 46 Arden Avenue, Ewing Township.
Q Do you work in Trenton?
A Yes, I do.
Q Are you a member of Core?
A Yes.
Q What is your position in Core?
A Chairman of the local chapter.
Q What area does that chapter cover?
A Well, it's Mercer County Chapter of Core and it covers all Mercer County actually. We're primarily working in Trenton at the present time.
Q Did you attend the meeting of the City Council that we have been talking about on November 5th?
A Yes, I did.
Q What was your purpose in attending?
A Well, I attended the meeting because our interest in the Urban Renewal Project in John Fitch Way 3. We're concerned that the people that are relocated that they're re-

located properly, and we're concerned about the whole situation in Trenton is concerned as far as integration of schools and things like this. We have always been told certainly nothing can be done about the schools because of a housing situation. So here was a housing situation and our interest was to see these people were properly located to bring about better integration.

Q What was to your knowledge the subject of the City Council meeting that you were interested in on that evening?

A Well, this resolution on John Fitch Way 3.

Q Did you invite other members of Core to attend with you?

A Yes, because of my lack of knowledge of Urban Renewal and because Urban Renewal is a big thing. You can either build segregated or integrated cities. I invited all of these people to come. We came to listen and observe.

Q Why were these people with you?

A I invited them to observe the meeting.

Q Some of them were not local people, were they?

A No.

Q Why did you feel a need to have people from other than the Trenton area with you?

A Well, because of my lack of knowledge, as I said before, in Urban Renewal and we were primarily there to listen and observe.

Q Did you meet at your home with some of these people before you attended the meeting?

A Yes, they came by my home.

Q During that meeting at your home was any plan engaged in to disrupt this meeting or do any demonstrating at this meeting?

A No.

Q Did you at any time or any of the ladies and gentlemen you were with have such a plan?

A No, there was no plan.

Q You did then attend the meeting at City Hall in Trenton?

A Yes.

Q You did also speak at that meeting?

A Yes, I did.

Q Do you recall when the incident took place involving some of the defendants here; you spoke prior to that, did you not?

A Yes.

Q Did you speak immediately prior to the speaker who was on the platform when the incident took place?

A Yes.

Q Would you describe your talk and the reactions of the Council and audience to it?

A Well, I would have to comment on the whole meeting. It was more or less informal. For instance, people were allowed to come up and state pro or con for this project, and throughout any one person's talk the councilmen might ask us questions or we might ask them questions. So it was more or less informal. When I was talking, well, I think when Mr. Good was talking first he had been given a time limit and he could not speak for the NAACP state-wide because they said this was Trenton. So when I began to talk the President of the City Council told me I had no right to be there because after all I lived in Ewing Township.

I did point out certainly we were interested in problems all over, but I did own property in Trenton but that didn't seem to make any difference.

So he said he'd much prefer to hear from the people from the area. At that point Council Woodson interrupted and said, "It wasn't, 'For Whom The Bell Toll,' it tolled for you and I," and I had every right and every American citizen should be concerned with Urban Renewal, we had every right to be there.

Q Did these remarks by the President and Councilman Woodson take place after you started to speak?

A Yes.

Q Were you then permitted to continue your talk to conclusion?

A Yes.

Q Will you describe the nature of the audience at that meeting?

A Well, it was more or less, well, each group -- I'm thinking because they had several groups there, but we had placards and signs which we placed in the front row of where we were sitting. The NAACP signs also were there. Now, when someone was talking and a point was pleasing say to the audience, well, they applauded or they said, "I'm for that," or something like this, "Good; you know that's telling them." This is what happened. So you were constantly more or less interrupted and there was, you know, applause after everyone's talk, especially against the project there was applause.

Q Where were you seated after you returned from your talk?

A I believe I was sitting in about the third row.

Q Do you remember the talk of the man who spoke immediately after you?

A Yes, I remember his attempts to talk.

Q What was that like?

A Well, after the President of Council said so emphatically he wanted someone from the area, this gentleman came forth and identified himself and said, "I do live in the area." He said, "If you build homes for $20,000," he said, "I spent $6,000." He said, "I'm the only breadwinner," or something like this, "in my family and this is the only place I know." He said, "I'd like to be able to move back here."

So Walsh said something like, "It's going to take three years or something for the homes to go up so you'll just have to find some place to go." He said -- at least he was attempting to say, "A dog wants to belong some place. He has to have a home."

Q Do you remember the reaction, if any, from the audience at the time of this talk?

A Well, I was for one startled because I thought here was a man from the area who was trying to say what he really wanted and I didn't think he was being allowed to say it.

Q Do you remember the remarks that were made by Mr. Callender from the audience?

A Well, I remembered when the poor man, you know, however uneducated he might have been I think he was putting his point across well and he was trying to talk and I was interrupted and here this poor man was interrupted, too. And someone said, you know, "Let the man talk."

Q Do you remember who said it?

A I don't remember who said it, no.

Q What part of the audience did that remark come from?

A The exact section I don't remember because they said it before. I probably would have said it next.

Q Was it in the section of the audience in which you were seated?

A I don't believe it was.

Q What was the comment from the Council after that statement was made?

A Well, when this statement came the Council President seemed to become, you know, very upset because, you know, he was getting a reaction from the audience to this man being denied his rights.

Q Did he say anything?

A He said, "One more outburst like that and I'm going to have you removed from the chambers," or something like this.

Q Do you remember Herb Callender's remark to the effect, "We haven't done anything yet"?

A I remember him saying it, yes.

Q Did that indicate to you a threat, demonstration or some other action would be taken by him or anyone else?

A No, no, it did not.

Q Was that remark on his part any louder than the other remarks you heard from the audience?

A No, it was not.

Q What happened after that remark on the part of

Mr. Callender and the direction from Mr. Walsh, what happened from Mr. Callender's standpoint?

A Mr. Callender said, "We haven't begun to disrupt anything." He said, "Remove that man," looking directly toward us and I, myself, didn't realize he was talking about him. You know, I was a little surprised. And Officer Downing came toward him and he stood there for a moment and walked away. If he said anything to Mr. Callender, I don't know what he said. But the next thing I knew Callender was being drug out of the seats by two officers.

Q Did you observe where the defendant, Crittendon, was seated?

A I'm not sure if he was sitting on the same row with me. I know no one was sitting by Mr. Callender. I do know that. There was about fourteen or fifteen of us and none of us were sitting together.

Q Did you observe Mr. Callender from the time the officer came to him and the time he was taken out of the room?

A Yes.

Q At any point during that time did the defendant, Crittendon, lock arms with Mr. Callender?

A No, he did not.

Q Did the audience have placards at any place?

A Yes.

Q What were they like?

A Signs, you know. "Look for low rent housing," and "Public Housing," and things like this. "We want an integrated city," signs of this sort. They were waving them up and down after people talked.

Q What happened after Mr. Callender was removed from the room?

A Well, Mr. Callender was dragged outside and he was put outside the door against the wall.

Q How do you know he was put there?

A Because I followed him.

Q Where exactly was he in relation to that diagram that is on that piece of paper over there?

A The one that has been indicated before by the other defendants, the first one there.

Q The doors were open then, weren't they?

A Yes, the doors were open.

Q Was he beyond the open door?

A Yes, very much beyond that.

Q Did you walk out immediately afterwards?

A Yes, I did.

Q Did you observe whether or not the meeting continued at that time?

A Well, the gentleman began talking again. When they were dragging Mr. Callender nothing was happening because everyone was looking.

Q How long a period of time was that?

A It was a few minutes I know.

Q Did you walk outside afterwards then?

A Yes.

Q What did you do?

A Well, I stood there because I didn't understand what was really happening. I was wondering why this was happening, why the man wasn't allowed to continue and why were they dragging him like that. I just stood there looking, you know, at this.

Q Were you joined by the other defendants, too, other than Mr. Callender?

A Right. Most of the people sitting over there, Core people, walked out. I know of two or three people that went back into the meeting.

Q Did you then sit down near Mr. Callender?

A Yes, I did.

Q Did the other defendants?

A Yes.

Q What was your purpose in doing this?

A As I have attempted to say, I felt -- I, myself, was concerned. Here was an American citizen attempting to exercise freedom of speech and I'm sure the entire audience recognized, or you wouldn't have had an outburst, he was being denied.

Q Which person?

A Mr. Bradley. I'm referring to Mr. Bradley.

Q Go ahead.

A He was attempting to exercise his freedom of speech and certainly that's what we were there for, too. I felt this had been denied.

Q Where did you sit down?

A I sat down in front of -- I believe it was in front of Mr. Smith.

Q Where were you seated in relation to the six circles on that diagram?

A I was in between the two girls.

Q I take it then all of the people who were seated there were beyond the open door.

A Yes, we were.

Q Did any of you in any way interfere with the opening or closing of that door?

A No, we did not.

Q Did any of you in any way interfere with anyone coming in or out of that hallway at any time?

A No, we did not.

Q Do you remember when the doors were closed -- they were closed, weren't they?

A They were closed, yes.

Q Did the police at any time stand near those doors?

A No. The police seemed to come from everywhere suddenly. They just came and I remember saying, "Get that one," you know, and McBride saying, "Take it easy." I remember him saying that, "Don't be rough on them."

Q Were you removed from that hallway by the police?

A Yes, I was.

Q Did the police ask you to leave?

A No, they did not.

Q Did they place you under arrest?

A I don't know what happened to me. I was carted away. I attempted to get my shoe. I lost a shoe and I was just dragged down the hall. As a matter of fact, we got into jail.

Q Did you observe Mr. Callender at any time attempt to leave?

A Yes, he got up.

Q What happened?

A Mr. Downing pushed him back down.

Q Did you observe anyone or did anyone complain, to your knowledge, that he could not leave or enter that meeting room?

A No.

MR. FOX: That's all, sir.

THE COURT: All right.

CROSS EXAMINATION BY MR. PHELAN:

Q Where are you employed?

A State of New Jersey.

Q What department?

A Administrative Office of the Courts.

Q Administrative Officer of the Courts?

A Office of the Courts.

Q There is no question you sat down in the corridor?

A There's no question I sat down.

Q At any time did Mr. Walsh as President of the City Council deny you the right to speak, to address the Council?

A He attempted to do that. He told me I had no right to be there.

Q Were you permitted to speak?

A After Councilman Woodson spoke to him.

Q Did you ultimately speak?

A Yes.

Q When you terminated your talk or speech, you had said everything that you wanted to say?

A Yes.

Q Now, do you remember the officer who removed you from the corridor of the City Hall?

A There was two officers. No, I don't.

Q You don't know who?

A No, I couldn't positively identify him.

Q Did you have any conversation with either Patrolman Downing or Sergeant McDonough?

A No.

Q Did Officer Downing ask you to come along peacefully?

A No.

Q He never said anything to you?

A No, he did not.

Q They just grabbed you and dragged you out?

A Right.

Q Did it require the use of a stretcher to remove you?

A To remove me? I was dragged.

Q You were dragged. And you say that you lost your shoe?

A Yes.

Q Did you ask either of the officers if you could get your shoe?

A Yes.

Q But you don't recall what officers?

A No, I can't recall. I might not have said, "Can I get my shoe." I said, "Oh, my shoe," something like that. I might have said this.

Q You say you personally observed Officer Downing push Callender back to the floor?

A Yes.

Q Was Commissioner --

MR. PHELAN: Strike it, please.

Q Was Director McBride present during this entire affair?

A Yes.

Q How long or what period of time, Mrs. Lewis, transpired between the time that Callender was removed from the City Hall Chamber to the time that you were removed to the police patrol ambulance?

A From the time? Probably twenty, twenty-five minutes. I'm not sure. This is a pure guess.

Q Was there a lot of scurrying going on back and forth?

A What do you mean by scurrying?

Q A lot of people milling about?

A People were coming back and forth. Mr. Good was saying, "Don't do that to them. Don't do that to them." People were, you know, just going back and forth.

Q Was there a lot of talk going on?

A Talk?

Q Conversation.

A Where?

Q Out in the corridor.

A Yes. I believe one of the defendants testified someone came up to interview somebody from the White City Council, that was the first of my knowledge I knew that was even in Trenton.

Q Were the doors open at this time?

A I believe they were, yes.

Q Were these voices carrying on into the chambers; do you know?

A I don't know if the voices could be heard because I was on the outside of the chambers. Whether people could hear in the inside, Mr. Callender didn't speak to this gentleman.

Q The conditions that existed in that corridor after you had seated yourself down, would you classify that as an orderly procedure?

A Yes, I would.

Q It was strictly orderly sitting down?

A Yes, I considered it orderly.

Q The reason you say you sat down was that you were attempting to express your constitutional right of free speech?

A Right, as an American Negro, American citizen.

Q And at no time did you hear anyone say, "You're free to go," period?

A No.

MR. PHELAN: I have nothing further, your Honor.

(The witness leaves the witness stand.)

MR. FOX: That is our case, sir.

MR. PHELAN: May I call Officer Downing.

ROBERT DOWNING, previously sworn as a witness, resumes the witness stand as a rebuttal witness called by the State, and testifies as follows:

DIRECT EXAMINATION BY MR. PHELAN:

Q Officer, I don't believe I need remind you that you are still under oath from your prior swearing. Officer, there has been testimony to the effect that at no time did you as an officer or member of the Trenton Police Department ask Mr. Callender to leave the City Hall Chamber, is that correct?

A No, sir, it is not.

Q Do you recall the specific number of times you asked Mr. Callender to leave?

A Mr. Callender?

Q Yes.

A When I first approached Mr. Callender I stated to him he has been ordered to leave the assembly room, would he kindly do so peacefully. And like I stated, he slouched down in his seat. When I stepped back and I met the sergeant we again made the statement to him, which he refused.

Q Now, after Callender was removed to the corridor, you say he was placed against the wall, I believe you say his knees were pulled up toward his chest at first.

A That's correct.

Q And later he extended his feet so they extended out into the corridor?

A That's correct, sir.

Q And at any time did Mr. Callender make an attempt to get up?

A Not to my knowledge, sir.

Q At any time, sir, did you restrain Mr. Callender from arising?

A No, I did not.

Q With respect to the other defendants, Officer, namely Williard D. Crittendon, did you have occasion to speak to him in the corridor?

A Like I stated, I spoke to all of them as a group At first I spoke to the group telling them that no charges has been placed against them, they were free to leave, and they just looked, stared.

Q And later did you have an opportunity to speak to any of the individuals involved?

A Yes, I did.

Q And at any time did you ask these individuals to leave?

A Well, I spoke mainly to the ladies when we were in the process of removing them. I didn't like the idea of dragging the ladies down the hallway and through the elevator with the metal, and I pleaded with Mrs. Amis and Mrs. Schurik to please get up and walk because I just didn't approve of that.

Q And did they refuse?

A They just looked at me with a stare and remained limp.

Q Officer, do you recall whether or not a strait jacket was placed upon Mr. Crittendon for the purposes of removing him from the corridor?

A No, sir, there was no strait jacket used. I would like to correct this. This was a portable stretcher we use when we have to transport parties from a stairwell where it is winding so they won't fall out, and this is what was used.

Q When you addressed the six defendants as a group none of them replied to you when you asked them to leave voluntarily?

A That is correct, no one replied.

MR. PHELAN: Nothing further.

THE COURT: All right.

CROSS EXAMINATION BY MR. FOX:

Q Officer, no one in that chamber or in the hall at any time complained to you that he wanted to get out and couldn't get out, did he?

A No one complained to me about that.

Q You say you told all these defendants they were free to leave?

A I spoke to the five of them and the five of them offered no comment.

Q Which five did you speak to, all except Mr. Callender, is that it?

A Yes, sir.

Q When did you speak to them?

A Well, it was almost immediately after we arrived in the hallway because they were right behind us, and they stood there and so we told them that they were free to go. They wanted to know what was going on.

Q Did you tell them after that time, at any time, they were still free to leave?

A After which time -- after we told them once?

Q After you saw them in the corridor at the time you just described.

A Did we tell them again?

Q Did you tell them?

A I didn't tell them again, no.

Q Did you at any time place them under arrest?

A Yes.

Q When?

A This was about -- I can't say for time, but maybe ten or fifteen minutes after they were out in the hallway when they continued to stay.

Q As to this stretcher you described, once a man is in this stretcher or once Mr. Crittendon was in this stretcher, could he move his arms and legs?

A That depends. If the straps are secured he can move them without too much freedom.

Q Were they secured at this time?

A I don't recall. I didn't place him in there. I observed when he was in it.

Q If the straps were secured he couldn't move, is that right?

A A certain amount.

MR. FOX: That's all.

MR. PHELAN: Thank you.

(The witness leaves the witness stand.)

MR. PHELAN: Sergeant McDonough.

JAMES J. Mc DONOUGH,

previously sworn as a witness, resumes the witness stand as a rebuttal witness called by the State, and testifies as follows:

DIRECT EXAMINATION BY MR. PHELAN:

Q Likewise, Sergeant, I don't believe it is necessary for me to remind you that you are still under oath. Sergeant, there has been testimony by the defendants that at no time were they told that they were free to leave and that there were no charges being placed against them. During your participation in this incident did you have occasion to speak to any of the defendants with respect to their ability to leave?

A Yes, sir, I did. I spoke to the three ladies, to Mr. Smith and Mr. Crittendon not once but three times, and they were told three times that they were free to go if they wanted to walk out of the municipal building, which they refused to do.

Q Did they reply either affirmatively or negatively?

A No reply at all.

Q No reply whatsoever. Officer -- sorry, correction. Sergeant, during the time that you were in the corridor and Mr. Callender was seated on the floor, do you recall whether or not he made any attempts to rise to his feet?

A No, sir, he did not.

Q At any time did you observe Officer Downing restrain Callender from getting to his feet?

A No, I did not.

Q Sergeant, do you recall at any time during the course of the evening when a strait jacket was applied to the defendant, Crittendon?

A No, sir. There was no strait jacket applied. A portable stretcher was used and as Officer Downing described the reason why, they were given every opportunity to walk over to the elevator and walk down the steps, and they were told this would make it easier on everybody concerned, but they just declined this offer and remained seated and lying where they were.

MR. PHELAN: Nothing further.

CROSS EXAMINATION BY MR. FOX:

Q Officer, you assisted in the removal of Mr. Callender from the chamber, didn't you?

A Yes, I did.

Q After that did you go out to make a phone call?

A I didn't go out -- I went right adjacent to the corridor in which Mr. Callender had been put.

Q Did you make a phone call?

A Yes.

Q Was that phone in the corridor or in an office?

A In an office.

Q How long were you there?

A Well, there was no holdup on the phone call. I'd say less than a minute.

Q You didn't know, then, whether at that time Mr. Callender tried to leave, do you?

A No, sir, I do not.

Q Was it noisy in the hall?

A There was conversation. I wouldn't call it noise.

Q Did anyone at any time complain to you he wanted to get out of that hall and couldn't?

A I don't know that there was anyone wanting to go inside council chambers at that time.

Q No one did complain to you then.

A No, sir.

MR. FOX: That's all, sir.

MR. PHELAN: Thank you, sir.

THE COURT: One question I have.

MR. PHELAN: Excuse me.

THE COURT: Did you ask Mr. Callender to leave the hall?

THE WITNESS: No, sir, we did not. Mr. Callender had been placed under arrest and we carried him from the council chambers.

MR. PHELAN: Thank you.

(The witness leaves the witness stand.)

MR. PHELAN: Nothing further, sir.

THE COURT: This is an appeal from the Magistrate's Court of the City of Trenton involving six separate complaints against six separate defendants -- Marva Amis, Williard Crittendon, Joyce Schurik, Louis Smith, Herb Callender and Lily Lewis --

MR. FOX: I'm sorry, Your Honor --

THE COURT: I'm sorry.

MR. FOX: -- this closes the case. I don't know if you were about to ask us to be heard.

THE COURT: No, I thought you indicated it.

MR. FOX: No, no further witnesses. I'd like to be heard just briefly.

THE COURT: Do you want five minutes?

MR. FOX: No. Shall I be heard now? Are you suggesting a recess?

THE COURT: I thought perhaps if you wanted to sum up.

MR. FOX: I don't need a recess. I just want to point out again that the complaints which I know your Honor is familiar with but they are brief and I would just like to read the two counts of each complaint although, of course, you dismissed the first count as to four defendants.

They are that these defendants, and they are the same in each complaint as you know, did by noisy and disorderly conduct disturb and interfere with the quiet and good order of the City Council meeting. That is the first count.

The second count is at the aforesaid time and place -- and this is a statement on the complaint -- Lily Lewis in this case and, of course, similarly as to the five others, did obstruct and interfere with persons lawfully therein.

Now, it seems clear that the language of the second count says that these people, all of these defendants did interfere with people lawfully therein, referring to the City Council meeting, not referring to the hall, not referring to anywheres else but inside the meeting.

It doesn't appear to me that anything that has been shown here with regard to the activities of these defendants outside the hall has indicated that they interfered with people inside the hall. The doors were closed and even before they were closed the meeting continued. If anything, it was interrupted for a minute or two primarily and only for the removal of Mr. Callender by the two policemen. If that is so, and I think it is, I don't see how a conviction can be sustained on this second count.

No one made any complaints in any way that they couldn't get in or out of that hall and the meeting did continue. Some people, as a matter of fact, did go in and out apparently just to see what was going on in the hall, but this didn't interfere with the meeting and certainly the position of these defendants outside didn't interfere with these people coming in and out.

As I stated at the end of the State's case, it may be sitting down in the hall as these defendants did is a violation of some statute but, of course, the question here, as you know is, is it a violation of this statute.

For these reasons I find -- I am hard-put to find and ask that dismissals be entered as to the second count for lack of any evidence to sustain this count.

You recall at the end of the State's case there was a dismissal entered as to four of these defendants, all except Mr. Crittendon and Mr. Callender. The basis, as I understood it at that time, for not entering a dismissal on the first count as to the defendant, Crittendon, was that there was some evidence that he linked arms with Callender, the other defendant.

There was no evidence then, at that time, that he had in fact chanted or done anything, chanted, "Freedom," or done anything else to interfere with that meeting. It seems to me this still exists: that the fact that someone did say there was a linking of arms, however tenuous on the part -- in the course of the State's case, is well offset by the subsequent testimony in which it has been indicated by other witnesses that he was -- Crittendon was not even seated next to Callender, and if he did anything it was to touch Callender.

On that score I should think at least as to him the first count, too, should be dismissed.

Of course, for other reasons I am asking that the remaining counts as to all be dismissed as I have just indicated.

I think that it is incumbent upon the State to show, if they seek to prove the second count of these complaints, to show that there was in fact some kind of interference. I have indicated, I think, they haven't shown there was anything in any way interfered with the activities inside the chamber while these defendants were in the hall. I think this alone should be or could be enough to sustain a dismissal of the second count.

I also think, though, if it should be decided that this is not enough to sustain a dismissal, that the State must show somebody was actually interfered with either coming in or out of that hall or in other ways, and to my recollection not one, not one person with perhaps the exception of the City Council Clerk who said he was momentarily disrupted when he tried to open the door, not one person has said he had trouble getting in and out of that chamber. The meeting continued.

Some have said that these defendants, perhaps two of them or three of them, were seated in such a way as to block the door. Of course, the defendants deny that. Even if they do say that, I think it is up to them to show which ones blocked that door.

It is even clear, even taking the testimony of the police in its most favorable aspect as far as the State is concerned, that at least two or three of these people in the hall were far enough away from that door that they themselves didn't block it.

And I'd just like to reiterate no matter how unfavorably some of us, some of you or others may look upon individuals who you may think are doing something wrong when they sit down in the hall, of course the issue is were these statutes violated. For these reasons I just set forth I find it difficult to see there was a violation.

Now, it is true the City Council President did at one time ask the police to move Mr. Callender and he didn't go when he was told to go by the Council President. But this is a public meeting, a City Council meeting, and I am sure you can take notice of the general nature of Council meetings in a town of the size of Trenton and with the varying populous that Trenton has and this was a controversial issue.

It seems to me there should be some leeway in issues of this kind. This leeway all be it perhaps a constitutionally protected leeway was not afforded in this instance and that a President of a Council does not have the unobstructed -- the unfettered right to ask people to be removed from the chamber, particularly in view of what happened here. In any event, Mr. Callender was asked to leave and he didn't and he was taken away.

I would like to make one or two additional points, briefly. It seems further, and I did say this before at the end of the State's case, that these are statutes that are very much alike, so much alike in this case, both using the same word, "interfere," that I think that this should be treated not as two separate offenses as it was treated in the Municipal Court but as one offense, if that, as to each defendant. Of course, there are only two situations, two defendants now as it stands now are charged with two counts.

One further brief word as to the fines that were imposed in this case. They were very severe. The total fines, and these defendants are all members of the Congress of Racial Equality, if fines are to be paid -- if they are paid -- would probably come out of the limited treasury of that organization. The total fines I believe were something like $1,200.00. They were it seems to me unusually severe. And not only, of course, as I stated now do I think there is no basis for sustaining these convictions, I think there is no basis for such, so severe fines.

You, of course, have seen these defendants; they have testified before you. They are not criminals. They don't fall in the classification of traffic offenders. I think they are in a much more protected status than that.

For these reasons which I set forth briefly here because I know you have heard the case and there is no need to go into these arguments at any length, I think the complaints should be dismissed.

MR. PHELAN: First of all, your Honor, I'd like to address myself as to the severity of the fines that Mr. Fox makes mention of. The State recognizes that this being an appeal recognizing the principles laid down in State versus Johnson, the appellate tribunal does possess the inherent right to modify or to reduce a sentence which has been imposed by a lawfully constituted tribunal.

I would urge this Court that, No. 1, surely the imposition of a fine in this particular case is not what we would call severe. We know under the Disorderly Persons Act the fine could be imposed up to $1,000.00 and that there could be incarceration for one year as a result of a violation of this particular act. I don't believe the fines that were imposed in the Municipal Court fall in the classification which would warrant a disturbance by any appellate tribunal.

Secondly, Mr. Fox does not believe that the conduct and the action of these six defendants was such as to warrant a conviction under this particular section.

Mr. Fox would further suggest to this Court there be two yardsticks, one for other citizens of the community and one for members of Core, that being a member of Core they are then vested with certain rights that transcend and go beyond the ordinary duty owed by a citizen to his community. I believe the law was made for one and it was made for all.

Surely, the conduct of these six defendants is one of the most reprehensive affairs that could possibly befall the City of Trenton. Here we have the duly constituted governmental authority in formal meeting attempting to enact legislation, I believe, that Mr. Walsh classified it for the betterment of the community, and as a result the elected officials are held up to ridicule, to scorn; that their deliberations are completely disrupted by the conduct which was precipitated, No. 1, by Mr. Callender whose refusal to obey a distinct, clear and audible order by a member of the Trenton Police Department precipitated this entire transaction; then the conduct of Mr. Crittendon by his own testimony that he may have placed a hand upon Callender's shoulder as he slouched down into the seat; then the conduct of the other four, Smith and the three women, following out into the corridor, which is the only means of egress and ingress to this council chamber and their flaunting themselves upon the floor, absolutely refusing the urging of Patrolman Downing, Sergeant McDonough, Sergeant McKeever, absolutely refusing.

The officers testified there was neither an affirmative nor negative reply to the order to leave, to go. The situation was at an end. Instead by their passive conduct they created the situation which anyone would recognize was a complete interference with the orderly conduct of this City Council meeting.

I believe the State has more than adequately born the degree of proof by the testimony of not only Officier Downing, Sergeant McDonough, McKeever, by Officer Guadagno and Chordas. They all testified as to one and the same thing.

Then we have witnesses parade here before this Court and again say or intimate that Patrolman Downing exercised undue force and restraint forbidding or not permitting Callender to arise from the floor, that he was pushed back to the floor.

The testimony of each of the defendants, the men, the males involved, admit the locking of the arms to prevent the police in the enforcement of their duties and likewise the women.

I believe the State amply has born the degree of proof which is required under this particular act, and I would urge, strongly urge this Court, that the decision of the Trenton Municipal Court be affirmed and that the Court impose a sentence which is appropriate with the Court's finding. Thank you.

MR. FOX: Just one brief word?

THE COURT: Sure.

MR. FOX: I am surprised that the Prosecutor suggests that these defendants either by my statements or theirs, it is requested these defendants receive special treatment. The whole purpose of the activities of these defendants in this town and elsewhere is that they receive not special treatment but equal treatment. Their position is that they receive less than that. They ask only that they be treated equally, and I am sure your Honor understands that is all we have ever asked here and that we are not suggesting they be given a preferred statement.

My suggestion was simply when I spoke before, that it is clear this is a violation of the Disorderly Persons Act -- Statute true, but we're not talking about drunk and disorderly and we're not talking about traffic cases. This is a different situation.

Now, the Prosecutor made some remarks about open defiance of the police in preventing the police from enforcing their proper duties. That is not the issue here and I don't think anybody properly sees that as the issue. The issue was this statute violated, was that meeting interfered with. If there was interference, was it such to constitute violation of this statute and was this done. Of course, I am sure you will decide on that issue.

THE COURT: Well, I have already indicated there are six separate complaints and I read the six separate names of the defendants. They are charged under two counts, the first count being -- and all of the counts are word for word the same as to each defendant -- the first count they did by noisy and disorderly conduct, disturb and interfere with the quiet and good order of the City Council meeting, which is contrary to Section 28 of 2A:170.

As everyone who is here understands, I dismissed the complaint regarding the three members of the distaff side here and Mr. Smith insofar as that charge is concerned for lack of evidence.

I have no question in my mind and, of course, the test in a case of this kind even though it is quasi-criminal, you must establish -- the State has to establish every point beyond a reasonable doubt. There is no question in my mind this was established regarding Mr. Callender by his actions inside the chamber after he was asked to leave certainly by President Walsh and I believe, as a matter of fact, by Officer Downing. On that particular charge regarding Mr. Callender, I am going to impose a fine of $100.00.

As far as Mr. Crittendon, I still feel something certainly occurred between Mr. Crittendon and Mr. Callender inside the hall. He was seated, I believe, either next to him or I think two seats away. The testimony isn't clear to me when the officers went back, the two officers went back the second time, the officer and Sergeant McDonough went back, there was no testimony that he didn't let go if he did have hold of him.

I don't feel beyond a reasonable doubt in my mind has been proved against Section 28. So I'll dismiss it as to him after hearing the defense counsel's case.

As to the second count which is a

violation of Statute 2A:170-29, the specific section being 2b, states that any person who in any place, public or private, obstructs, molests or interferes with any person lawfully therein is a disorderly person and therefore subject to the fines as stated in 2A:169-4.

I have no difficulty with this particular case. I think everyone including the defendants, except they did violate the law, think it wasn't a great deal of an uproar because of perhaps the way the police handled it and the way the defendants reacted to the way the police handled it.

accept ?

I can understand concern of the City Hall, not necessarily entirely what these people themselves do in a situation such as this but, of course, the law is concerned with what other people in the chamber are going to do as a result of what they do, which is the big concern, I think.

In my opinion beyond any reasonable doubt it has been established they certainly obstructed and interfered as I understand the word, "obstruct." It isn't necessary they block the door as I understand it, but to sit in the hall just outside the door certainly in my way of thinking is obstruction. The word, "obstruct," means to hinder not absolutely block out.

As far as interference, there certainly was an interference. It wasn't a great interference as far as I can gather from hearing all the testimony.

I am going to find each one of them guilty. As far as the fine on this particular count, I don't think the other Court was completely out of line. I don't see any reason, from what I have heard, that Mr. Smith and Mr. Callender should be fined more than the others. I am going to fine each one of them $100.00 on the second count. So the fines will be $100.00 as to each defendant on the second count, and $100.00 against Mr. Callender on the first count.

600
+100
700

MR. FOX: Your Honor, as to those

fines, can we have the imposition of them suspended let's say for the time that is needed to determine whether or not there be an appeal, have them raise the money, say a month?

THE COURT: I have no objection to that.

MR. PHELAN: One month, your Honor --

THE COURT: Yes.

MR. FOX: It will be a month.

MR. PHELAN: -- to make payment?

THE COURT: One month. Thank you.

MR. FOX: Thank you, sir.

(End.)

- - -

- - -

MERCER COUNTY COURT
LAW DIVISION (CRIMINAL)
APP. 19-64 (987)

THE STATE OF NEW JERSEY

vs.

LOUIS S. SMITH, HERBERT E. CALLENDER, MARVA L. AMIS, LILY R. LEWIS, WILLIARD D. CRITTENDON, JOYCE L. SCHURIK,
Defendant-Appellants.

CERTIFICATE

I, Albert M. Bernstein, C.S.R., one of the Official Court Reporters in and for the State of New Jersey, certify that the foregoing is a true and accurate transcript, of my original stenographic notes, to the best of my knowledge and belief.

Albert M. Bernstein

Date: June 2, 1965

STATE OF NEW JERSEY vs. SMITH et al, 1964-1967
(LEGAL PAPERS)

Wisconsin

Please Retain Original Order

Box 37
Folder 24

MUNICIPAL COURT OF THE CITY OF TRENTON

State of New Jersey
vs.
Williard D. Crittendon
Defendant.

COMPLAINT
DISORDERLY PERSONS ACT

STATE OF NEW JERSEY }
COUNTY OF MERCER } ss.

On this Nov. 6, 1964 , personally appeared before me, the Municipal Magistrate of the City of Trenton, Ptl. Robert Downing who, upon his oath, complains that at the City of Trenton aforesaid, on Nov. 5, 1964 at City Hall, Williard D. Crittendon

did violate the provisions of An Act of the Legislature of the State of New Jersey entitled "Disorderly Persons," N.J.S. 2A, Chapter 170, in that the defendant

did by noisy and disorderly conduct disturb and interfere with the quiet and good order of the City Council meeting. Sec. 28
Second Count:
At the aforesaid time and place, Williard D. Crittendon did obstruct and interfere with persons lawfully therein. Sec. 29 (2-b)

against the peace of the State; he therefore prays that the said defendant may be apprehended and held to answer this complaint, and be further dealt with as the law directs.

Sworn and subscribed to before me the day and year first above written

Complainant

Magistrate-Clerk, Municipal Court of Trenton

MUNICIPAL COURT OF THE CITY OF TRENTON

State of New Jersey
vs.
Joyce L. Schurik
Defendant.

COMPLAINT
DISORDERLY PERSONS ACT

STATE OF NEW JERSEY }
COUNTY OF MERCER } ss.

On this Nov. 6, 1964 , personally appeared before me, the Municipal Magistrate of the City of Trenton, Ptl. Robert Downing who, upon his oath, complains that at the City of Trenton aforesaid, on Nov. 5, 1964 at City Hall, Joyce L. Schurik

did violate the provisions of An Act of the Legislature of the State of New Jersey entitled "Disorderly Persons," N.J.S. 2A, Chapter 170, in that the defendant

did by noisy and disorderly conduct disturb and interfere with the quiet and good order of the City Council meeting. Sec. 28
Second Count:
At the aforesaid time and place, Joyce L. Schurik did obstruct and interfere with persons lawfully therein. Sec. 29 (2-b)

against the peace of the State; he therefore prays that the said defendant may be apprehended and held to answer this complaint, and be further dealt with as the law directs.

Sworn and subscribed to before me the day and year first above written

Complainant

Magistrate-Clerk, Municipal Court of Trenton

MUNICIPAL COURT OF THE CITY OF TRENTON

State of New Jersey
vs.
Louis S. Smith

Defendant.

COMPLAINT
DISORDERLY PERSONS ACT

STATE OF NEW JERSEY }
COUNTY OF MERCER } ss.

On this **Nov. 6, 1964** , personally appeared before me,

the Municipal Magistrate of the City of Trenton, **Ptl. Robert Downing**

who, upon his oath, complains that at the City of Trenton aforesaid, on **Nov. 5, 1964, at City Hall, Louis S. Smith**

did violate the provisions of An Act of the Legislature of the State of New Jersey entitled "Disorderly Persons," N.J.S. 2A, Chapter 170, in that the defendant

did by noisy and disorderly conduct disturb and interfere with the quiet & good order of the City Council meeting. Sec.28

Second Count:

At the aforesaid time and place , Louis S. Smith did obstruct and interfere with persons lawfully therein. Sec.29 (2-b)

against the peace of the State; he therefore prays that the said defendant may be apprehended and held to answer this complaint, and be further dealt with as the law directs.

Sworn and subscribed to
before me the day and
year first above written

Complainant

Magistrate-Clerk, Municipal Court of Trenton

MUNICIPAL COURT OF THE CITY OF TRENTON

State of New Jersey
vs.
Herbert E. Callender

Defendant.

COMPLAINT
DISORDERLY PERSONS ACT

STATE OF NEW JERSEY }
COUNTY OF MERCER } ss.

On this **Nov. 6, 1964** , personally appeared before me,

the Municipal Magistrate of the City of Trenton, **Ptl. Robert Downing**

who, upon his oath, complains that at the City of Trenton aforesaid, on **Nov. 5, 1964 at City Hall, Herbert E. Callender**

did violate the provisions of An Act of the Legislature of the State of New Jersey entitled "Disorderly Persons," N.J.S. 2A, Chapter 170, in that the defendant

did by noisy and disorderly conduct disturb and interfere with the quiet and good order of the City Council meeting. Sec. 28

Second Count:

At the aforesaid time and place, Herbert E. Callender did obstruct and interfere with persons lawfully therein. Sec. 29 (2-b)

against the peace of the State; he therefore prays that the said defendant may be apprehended and held to answer this complaint, and be further dealt with as the law directs.

Sworn and subscribed to
before me the day and
year first above written

Complainant

Magistrate-Clerk, Municipal Court of Trenton

MUNICIPAL COURT OF THE CITY OF TRENTON

State of New Jersey
vs.
Lily R. Lewis
Defendant.

COMPLAINT
DISORDERLY PERSONS ACT

STATE OF NEW JERSEY
COUNTY OF MERCER } ss.

On this **Nov. 6, 1964** , personally appeared before me, the Municipal Magistrate of the City of Trenton, **Ptl. Robert Downing** who, upon his oath, complains that at the City of Trenton aforesaid, on **Nov. 5, 1964 at City Hall, Lily R. Lewis** did violate the provisions of An Act of the Legislature of the State of New Jersey entitled "Disorderly Persons," N.J.S. 2A, Chapter 170, in that the defendant

did by noisy and disorderly conduct disturb and interfere with the quiet and good order of the City Council meeting. Sec. 28
Second Count:
At the aforesaid time and place, Lily R. Lewis did obstruct and interfere with persons lawfully therein. Sec. 29 (2-b)

against the peace of the State; he therefore prays that the said defendant may be apprehended and held to answer this complaint, and be further dealt with as the law directs.

Sworn and subscribed to
before me the day and
year first above written

Complainant

Magistrate-Clerk, Municipal Court of Trenton

MUNICIPAL COURT OF THE CITY OF TRENTON

State of New Jersey
vs.
Marva L. Amis
Defendant.

COMPLAINT
DISORDERLY PERSONS ACT

STATE OF NEW JERSEY
COUNTY OF MERCER } ss.

On this **Nov. 6, 1964** , personally appeared before me, the Municipal Magistrate of the City of Trenton, **Ptl. Robert Downing** who, upon his oath, complains that at the City of Trenton aforesaid, on **Nov. 5, 1964 at City Hall, Marva L. Amis** did violate the provisions of An Act of the Legislature of the State of New Jersey entitled "Disorderly Persons," N.J.S. 2A, Chapter 170, in that the defendant

did by noisy and disorderly conduct disturb and interfere with the quiet and good order of the City Council meeting. Sec. 28
Second Count:
At the aforesaid time and place, Marva L. Amis did obstruct and interfere with persons lawfully therein. Sec. 29 (2-b)

against the peace of the State; he therefore prays that the said defendant may be apprehended and held to answer this complaint, and be further dealt with as the law directs.

Sworn and subscribed to
before me the day and
year first above written

Complainant

Magistrate-Clerk, Municipal Court of Trenton

MERCER COUNTY COURT
Case #987

THE STATE OF NEW JERSEY,	)	
Plaintiff-Respondent,	)	
vs.	)	Criminal Action
LILY R. LEWIS, MARVA AMIS, LOUIS S. SMITH, JOYCE L. SCHURIK, WILLIARD D. CRITTENDON, and HERBERT E. CALLENDAR,	)	**NOTICE OF APPEAL**
	)	
Defendant-Appellants.	)	

NOTICE IS HEREBY GIVEN that the defendants, Lily R. Lewis, of 46 Arden Avenue, Ewing Township, New Jersey, Marva Amis, of 4285 Leidy Avenue. Philadelphia, Pennsylvania, Louis S. Smith, of 1821 Fillmore Street, San Francisco, California, Joyce L. Schurik, of 1541 Metropolitan Ave., Bronx 62, N.Y., Williard D. Crittendon, of 48 W. 125th Street, New York, New York, and Herbert E. Callendar, of 48 W. 125th Street, New York, New York, defendant-appellants, hereby appeal to the Appellate Division of the Superior Court of New Jersey from the judgment of the Mercer County Court, which is set forth below, and was entered against all defendants on February 9, 1965.

All defendants were charged, by complaints in two counts under the Disorderly Persons Act originating in the Municipal Court of the City of Trenton, with noisy and disorderly conduct and disturbing and interfering with the quiet and good order of a public meeting on November 5, 1964, at the City Hall in Trenton, New Jersey, in violation of N.J.S. 2A:170-28, and with obstructing and interfering with persons lawfully at the meeting in violation of N.J.S. 2A:170-29 (2-b).

On February 9, 1965, the Honorable J. Wilson Noden, of the Mercer County Court, ordered all defendants except Herbert E. Callender acquitted of the charge of violation of N.J.S. 2A: 170-28, and imposed a fine of $100.00 against Herbert E. Callendar for violation of that statute; in addition, the Honorable J. Wilson Noden ordered all defendants convicted of the charge of violation of N.J.S. 2A:170-29 (2-b) and imposed fines of $100.00 against all defendants except Herbert E. Callender, who received a fine of $200.00. The fines have not been paid.

DATED - May 10, 1965

ORIGINAL ENDORSED
FILED
MAY 10 1965
William H. Falcey
COUNTY CLERK

FOX, YANOFF AND FOX
Attorneys for Defendant-Appellants

By /s/ DAVID I. FOX
DAVID I. FOX
A Member of the Firm

I hereby certify that on May 10, 1965, the requirements of R.R. 1:2-8(e) were complied with.

A True Copy
William H. Falcey
COUNTY CLERK

FOX, YANOFF AND FOX
Attorneys for Defendant-Appellants

By /s/ DAVID I. FOX
DAVID I. FOX
A Member of the Firm

Service of a copy of the within Notice of Appeal is hereby acknowledged this 10th day of May, 1965.

PROSECUTOR OF MERCER COUNTY
BY David J. Schroth

Service of a copy of the within Notice of Appeal is hereby acknowledged this 10th day of May, 1965.

HONORABLE J. WILSON NODEN

/s/ BY J. WILSON NODEN

Filing of original and one copy of this Notice of Appeal is hereby acknowledged this 10th day of May, 1965.

MERCER COUNTY COURT

/s/ BY William H. Falcsy

SUPREME COURT OF NEW JERSEY
No. September Term,

State of New Jersey,
Plaintiff-Respondent,
vs.
Louis S. Smith, et al.
Defendants-Appellants.

Action
On Certification
ORDER

Pursuant to Rule 1:10-1 it is ORDERED that the Appeal from the judgment entered in this cause on February 9, 1965, in the Mercer County Court, now pending in the Superior Court, Appellate Division (A-753-64, be certified directly to this Court, to the end that it may be reviewed by this Court; and it is further

ORDERED that this cause shall be deemed pending on appeal in this Court, and that further proceedings herein shall be had in the same manner as provided for on appeals as of right, in accordance with the rules of this Court; and it is further

ORDERED that all papers necessary to be filed in the cause by the parties hereto in the prosecution of this appeal, down to and including the entry of mandate, shall be filed by the Clerk of this Court without the payment to him of fees for such filing.

WITNESS the Honorable Joseph Weintraub, Chief Justice, at Trenton on the 10th day of November 1965.

Dated ,

John H Gildea
CLERK

Clerk of the Supreme Court

A TRUE COPY
John H Gildea
CLERK

JUN 4 1965

FOX, YANOFF AND FOX
COUNSELLORS AT LAW
570 BROAD STREET
NEWARK, N. J. 07102
MArket 2 - 3624

JACOB FOX
LEO YANOFF
MARTIN S. FOX
DAVID I. FOX

June 3, 1965

Carl Rachlin, Esq.
Congress of Racial Equality
38 Park Row - Room 317
New York, New York

Att: Stephen M. Nagler, Esq.

Re: State v. Lou Smith et als

Dear Stephen:

Enclosed are two pages in the transcript that the Court reporter sent me today. They are pages 188 and 189 and they contain a correction whereby a word that should have been "cadaver's" is corrected from "cadapler's".

Very truly yours,

DAVID I. FOX

DIF:AG
Encl.

A Cadaver's jacket. I know. It surprised me, too. I thought it was interesting.

Q Then you weren't in a strait jacket, were you?

A Well, it's a strait jacket in like it's a psychiatric thing because they strap you in to prevent your arms from flaying. So you haven't much movement.

Q Did the police put this on you?

A Yes.

Q You were the only one?

A Yes.

Q Do you know why they put it on you?

A No. It was really kind of amusing if you allow me, because they came over and they had the thing and didn't know what to do with it. They saw me and it was long and I was tall. They said, "Maybe he'll fit." So that's the way it was.

Q You put this jacket on?

A No, they put it on. I didn't put it on.

Q Did you give them any reason -- were you violent?

A No. I just sat there.

Q You just sat there with your arms locked. Did you get the feeling of strength, too, like was testified to?

A Let's not make some big philosophical thing.

Q I'm asking.

A I'm just saying we did it. And it is true what he said, but what you're trying to do isn't.

Q I am just asking the question.

A All right. It gives me strength.

Q It was after that they had to place this jacket on you?

A After? Wait a minute. After I locked arms.

Q They had to break your arms apart?

A Yes. It wasn't much effort, yes.

Q Did anyone ask you to leave voluntarily?

A When I came outside the door I was standing watching. I don't know which officer it was. It may have been Officer McDonough. I'm not sure. He said, "Are you in or out?" And I just kind of looked at him. I didn't even answer him. I just kind of said to myself, "I guess I'm in." That was the last contact I had with the police officer speaking to me directly until we got to the Police Station. In the elevator going down, and I'm already wrapped up like this, a couple officers kind of smiling and saying, "It would have been a lot easier if you walked." I'm already there.

Q Were you on a stretcher?

A Yes, in the cadaver's thing.

Q He said it would have been a lot easier if you walked?

A Yeah. That's kind of a post-mortem as I'm already in the thing going down the elevator. What good does that

SUPERIOR COURT OF NEW JERSEY

Appellate Division

Docket No. A- 753-64

THE STATE OF NEW JERSEY :

vs. :

LOUIS S. SMITH, HERBERT :
E. CALLENDER, MARVA L.
AMIS, LILY R. LEWIS, :
WILLIARD D. CRITTENDON,
JOYCE L. SCHURIK, :
Defendant-Appellants.

QUASI CRIMINAL ACTION
(Under the Disorderly
Persons Act) on Appeal
from a Judgment of
Guilty from the Essex
County Court - Law
Division

Sat Below:
Noden, J.C.C.

BRIEF FOR APPELLANTS

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STATEMENT OF THE CASE

Defendants were convicted in the Municipal Court of Trenton, New Jersey of violating NJSA (1952) Chap. 2A: 170-28:

> "DISTURBING ASSEMBLIES
>
> Any person who by noisy or disorderly conduct disturbs or interferes with the quiet or good order of any place of assembly, public or private, including schools, churches, libraries and reading rooms, is a disorderly person."

and NJSA (1952) Chap. 2A: 170-29(2)(b):

> "OFFENSIVE LANGUAGE: MOLESTING OR INTERFERING WITH PERSONS.
>
> 2. Any person who, in any place, public or private, . . .
>
> (b) Obstructs, molests or interferes with any person lawfully therein; ... is a disorderly person."

An appeal was taken to the Mercer County Court which convicted Defendant Callender of violating NJSA (1952) Chap. 2a: 170-28, but acquitted all other defendants on that charge. All defendants were found guilty of violating NJSA (1952) Chap. 2a:170-29 (2)(b).

Defendant Callender is appealing his conviction under NJSA (1952) 2a: 170-28 to this Court and all defendants are appealing their convictions under NJSA (1952) Chap. 2a:170-29(2)(b).

QUESTIONS PRESENTED

1. DOES THE NOISE MADE BY A PERSON'S BODY AS HE IS DRAGGED, UNRESISTING, FROM A PUBLIC MEETING WHICH HE HAD A RIGHT TO ATTEND CONSTITUTE A "DISTURBANCE" OF THE MEETING?

2. IS NJSA (1952) CHAP. 2A:170-28 CONSTITUTIONAL ON ITS FACE OR AS APPLIED TO REMOVE FROM A CONTROVERSIAL PUBLIC HEARING A PERSON KNOWN TO HOLD VIEWS OPPOSED TO THE CHAIRMAN?

3. IS A PERSON WHO, WHILE UNDER ARREST, REMAINS IN A PLACE DESIGNATED BY THE ARRESTING OFFICER GUILTY OF "OBSTRUCTING" WITHIN THE MEANING OF NJSA (1952) CHAP. 2A:170-29(2)(b)?

4. IS A PERSON WHO BRIEFLY STANDS OR SITS IN A PUBLIC BUILDING WHERE HE HAS BUSINESS GUILTY OF "OBSTRUCTING" WITHIN THE MEANING OF NJSA (1952) CHAP. 2A:170-29(2)(b) ALTHOUGH NOT MORE THAN ONE PERSON CLAIMS TO HAVE BEEN "INCONVENIENCED" AND THAT PERSON FOR ONE MINUTE OR LESS?

5. IS NJSA (1952) CHAP. 2A:170-29(2)(b) CONSTITUTIONAL ON ITS FACE OR AS APPLIED TO A PERSON BRIEFLY SITTING IN A PUBLIC BUILDING WHERE HE HAS BUSINESS, WHEN AT MOST ONE PERSON CLAIMED MINOR INCONVENIENCE THEREBY AND NO BREACH OF THE PEACE WAS OCCASIONED?

STATEMENT OF FACTS

A meeting of the City Council of Trenton was called for the evening of November 5, 1964 for the purpose (among others) of discussing the John Fitch Way Project, an urban redevelopment scheme, and hearing testimony from interested persons (3a-24-28; 12a-6-15).

The project was and is controversial because it involves the removal of several hundred poor families without adequate arrangements for relocation, and offers to build middle income housing in its place. The Council had been advised in advance that there was considerable community opposition in the affected community and that people planned to come before the Council to express their objections (12a-8-22). Members of CORE and the NAACP, among other interested groups, as well as other deeply concerned individuals actually attended the meeting for this purpose (36a-15-18), and a large number of persons were present. Many people brought signs which they waved to show their support of the speakers (36a-36-37a-8). As the meeting proceeded several speakers came forward to address the Council. Their words were greeted with numerous vocal reactions from all over the audience (37a-12-22). Speakers were often interrupted by the members of the Council and Council

President Walsh, which led to a shout of "Let him speak" (37a-35) from somewhere in the room. These protests against the apparent harrassment of speakers by the President and Council were most notable when Odell Bradley, a resident of the area affected by the relocation project (3a-24-28), rose to speak (3a-18-22). Mr. Bradley was unable to convey his views through the screen of interruptions from the Council and its President. He finally asked in despair "Where will I go?" (37a-31-52). When President Walsh answered that he didn't know, Bradley complained that even a dog has a home (37a-32-34). The admonition of Mr. Bradley by the President for his comment (37a-34-35), evoked a strong vocal reaction of disapproval from the audience (37a-35-36; 42a-40-42).

At this point, President Walsh called for quiet in the room and stated (looking toward Mr. Callender) (12a-36-34) that anyone who created a further noise would be asked to leave (12a 37-40). Mr. Callender, a representative of CORE, which had been attempting to assist residents of the Fitch Way area, believed the words to be directed to him. He therefore stood up and responded: "We haven't done anything yet." (or words to that effect) (3a-44-4a-5; 12a-42), whereupon President Walsh instructed Patrolman Downing to remove

Mr. Callender from the room (4a-5-7).

The record does not show that Walsh ever asked Callender to leave prior to the time that he gave the order that Callender be removed. Mr. Callender was then carried out by Officer Downing and Sergeant McDonough (4a-19-29; 13a-24-26). Callender did nothing to resist the two officers, but merely, by remaining passive, did not assist in his own removal (4a-19-29). A number of other people in the audience began chanting "Freedom" (13a-22-23) in protest against the wrongful removal of Mr. Callender. Because Mr. Callender is a large man, some noise was produced when he was dragged over the seats and along the floor out of the Council Chamber (4a-19-29). He made no effort to resist. On the facts Defendant Callender was convicted of violating NJSA (1952) Chap. 2A:170-28, the court below saying, "There is no question this was established regarding Mr. Callender by his actions inside the chamber after he was asked to leave certainly by President Walsh and I believe, as a matter of fact, by Officer Downing." (63a-10-15).

Mr. Callender was set down outside the Council Chamber and remained on the spot on which he was placed until he was subsequently removed by the police (43a-25-28). There was testimony that Mr. Callender attempted to rise to leave, and that he was told that he could not by the police (38a-34-36). This was denied by the police (59a-28-32; 61a-16-23) indicating that nothing done by Mr. Callender up to that time (inside the meeting room) was regarded as unlawful. He did not attempt to move into a position in which he could block the doors to the Council Chamber, nor, for that matter, did he move in any way except to bend and unbend his legs for the purpose of making himself more comfortable (44a-10-14). The other defendants left the meeting voluntarily (4a-38-44). After some discussion, the other defendants sat down or crouched next to and in front of Mr. Callender (38a-38-43).

It is unclear from the record that the defendants actually interfered with the progress of any person into or out of the Council Chamber. The only testimony on the record indicating that anyone at all was in any way even inconvenienced in his movements by the presence of the defendants was that of Mr. Maziarz, the clerk of the council (5a-5-14) and he claimed only to have been delayed for less than a minute (10a-35-37). In addition, in his testimony Mr. Maziarz did not even claim that he asked any person who might conceivably have hindered his departure to move out of his way, and he was unable to identify exactly which defendants blocked his route (9a-24-34; 10a-31-33). Other witnesses for the State testified to the effect that they saw no one entering or leaving the Council Chamber (16a-17-19; 30a-10-11) which, of course, means that they saw no one else obstructed or impeded in any way. Mrs. McCrea, who testified on behalf of the defendants, stated that the only person who in any way interfered with her movements into or out of the meeting was Officer Downing (46a-39-41). Other witnesses declared that although people were entering and leaving the meeting all the time, none of them were in any way ever even inconvenienced by the presence of the defendants (40a-26-36; 43a-42-44a-4; 47a-4-8; 50a-38-53a-9). The defendants remained silent as they sat outside the Council Chamber. Police officers told the defendants that they could leave the building or be arrested, although the defendants had legitimate business, first in their right to attend the public hearing and second to observe what was being done with Defendant Callender, who had been wrongfully ejected. It was on the basis of this testimony that defendants were convicted of violating NJSA (1952) Chap 2A:170-29(2)(b), although they remained silent and peaceful, and although they remained where they were for legitimate reasons.

POINT I.

THE CONVICTION OF DEFENDANT CALLENDER FOR HIS CONDUCT INSIDE THE COUNCIL CHAMBER WAS AGAINST THE WEIGHT OF THE EVIDENCE AND THE APPLICABLE LAW.

The events leading to defendants' arrests took place at and immediately outside a public meeting of a political body called to discuss a controversial, emotionally charged subject (18a-7-34). The meeting was noisy (48a-39-49a-6). Mr. Callender and many other persons in the audience, differed from Council President Walsh. At the point when the issue considered crucial by opponents of the Fitch Way project was before the Council, the issue of what would happen to the hundreds of poor families to be displaced, Mr. Walsh incurred the ire of the audience by interfering with the testimony of one Bradley (42a-19-42). The record shows that Callender spoke approximately seven words and that Mr. Walsh singled him out for ejection (3a-44-4a-7). In the context, no justification for this ejection existed or was shown at the trial. On the contrary, the Court below did not find that Mr. Callender's speaking was in any way unlawful. So much of the holding of the Court below was unquestionably correct. Mullen v. State, 67 N.J.L.

not 2nd statement

451 (1906); Payroll Guarantee Association v. Board of Education, 27 Cal. 2d 197 (1945). In the latter case, the Court said (at 213):

> "Speakers who express their opinion freely run the risk of attracting opposition; they cannot expect their opponents to be silenced while they continue to speak freely."

Callender was convicted of creating a disturbance while being dragged from the Chamber without the slightest justification. There is no suggestion in the record that Callender said or did anything while being dragged.

The issue, therefore, is whether a person's ejection from a public meeting can constitute an offense where the person is completely passive while being removed, and where his removal is itself wrongful.

A. The statute does not apply to Callender's conduct.

~~conduct.~~

(1). In the context of the meeting, Callender's acts were not punishable.

The noise created by defendant Callender's body as it was dragged out of the room was the basis for convicting him of disturbing the meeting. The crucial element of intention to disturb is consequently totally lacking. In order to establish the offense of disturbing a meeting it

really different from Garner –

In Garner the arrest was made because they refused to leave. Here the arrest was made because after he refused to leave, his forcing them to drag him out disturbed the meeting, and for that he was arrested must be shown that the acts constituting the offense were intentional. Haywood v. Ryan 185 N.J.L. 116 (1913); Lancaster v. State, 53 Ala. 398, 25 Am. Rep. 625 (1875); State v. Linkhaw, 69 N.C. 214, 12 Am. Rep. 645 (1873); Brown v. State, 46 Ala. 175 (1871). In Garner v. Louisiana, 368 U.S. 167, 82 S.Ct. 248 (1951), Mr. Justice Harlan said (at 204 N.11):

> "It follows, of course, that petitioners' refusal to accede to the request to leave made by police officers could also not constitutionally be punished under the general statute. Were it otherwise, the determination whether certain conduct constitutes a clear and present danger would be delegated to a police officer. Simply by ordering a defendant to cease his protected activity, the officer could turn a continuation of that activity into a breach of the peace." /Emphasis supplied/.

The record shows that Callender was lawfully present at the hearing. The Court below found no fault in his conduct prior to his being dragged out (63a-10-15). It is plain that the New Jersey statute cannot be intended as a device for the silencing of opposition, for the termination of constitutionally protected activities.

(2) The statute involved, NJSA (1952) Chap. 2A:170-28, cannot be construed to make Callender's conduct unlawful.

The places listed in NJSA (1952) Chap. 2A:179-28

what
does intent
be mean
Walsh is
wrong in
denying Herb
int, but the
cops take him
anyway. Herb did
nothing illegal
intend to upset meeting?
Of course not in leaving
him under arrest or telling
him he would be under
arrest if he refused
the cops were merely obeying
be also illegal
direction [illegible] purpose
Further [illegible]
[illegible] fact that [illegible]
constitute a violation of
law. [illegible] clear
that it was not [illegible]
to authorize police to
tell him to leave

("schools, churches, libraries and reading rooms") are all of a kind in which *absolute silence* or solemnity is expected and, more, is necessary to orderly functioning. A strict construction of the statute limits the general words ("any place of assembly public or private") to a class of like situations. This meeting, which is not by nature one at which absolute quiet was to be expected, must be excluded from the operation of the statute. Indeed, unless the listing of "schools, churches, libraries and reading rooms" within the body of the statute was for the purpose of limiting the operation of the statute to the class of "silence" situations, the words serve no purpose whatsoever. In other words, only such places of assembly (places of complete silence) which are *ejusdem generis*, with the places enumerated and the uniform nature of the places enumerated in the statute are regarded as indicating the scope which the Legislature intended the statute to have. *In re Armour's Estate*, 11 N.J. 257, 94 A. 2d 286 293 (1953).

A political meeting at which controversial matters are discussed, and at which noise is to be expected is not within the intendment of a statute in which the Legislature has seen fit to enumerate "schools, churches, what is history of statute? from earliest enactment?

libraries and reading rooms" as examples of the "places of assembly" protected from "noisy or disorderly conduct." The Legislature would expect such meetings to be "noisy."

This interpretation of the statute reflects the common law history of "disturbing assemblies."

At common law it was a crime to disturb people gathered for religious worship. 4 Blackstone, Commentaries on the Laws of England; Of Public Wrongs, (Beacon Press, 1962) pp. 54, 55. The offense of disturbing a religious meeting had its origin in the policy of removing disabilities first from Protestant dissenters and later Catholics and Jews, and protecting their freedom of religious expression and their right to hold meetings unmolested. Rex v. Wroughton, 3 Burr 1683; 52 Geo. III, C. 155, §12 (1812). The New Jersey statute is one of many American enactments having a similar purpose.

This protection was extended to protect the freedom of assembly of people at benevolent gatherings of other sorts. A statute with such roots cannot be utilized, as here, to repress free expression by permitting the ejection and arrest of opponents for some slight noise.

if we assume [illegible] was wrong and had no right to ask Callender to leave, then the cops had no right to ask him to leave, and then dragging him out was wrongful

(3) According to the custom and usage governing political meetings, Callender committed no crime.

In jurisdictions in which the statutes do not contain an enumeration of "quiet situations," the definition of an unlawful disturbance depends in large measure on the character of the meeting and the usage and practice governing such meetings. Commonwealth v. Porter, 1 Gray 476 (Mass. 1820); 2 Wharton, Criminal Law, 674 (Anderson 1957); Jackson v. State, 21 Ga.App. 779, 95 S.E. 302 (Div. 2 1918); State v. Dahlstrom, 90 Minn. 72, 95 N.W. 580 (1903); Gaddis v. State, 105 Neb. 303, 180 N.W. 590, 12 A.L.R. 648 (1871). It has been said, for example, that mere words or acts which, if they happened elsewhere, would not be punishable at all and might even be commendable when occurring in churches, have been punished as:

> "... very great indignities to the Divine Majesty." 2 Russell on Crime 15,25 (Turner 1947).

Thus, for example, to impose the same standards of conduct on mere spectators at a baseball game as would be imposed on users of library facilities would be ludicrous, and to impose a standard of silence on persons attending a political meeting at which controversial issues were discussed and feeling ran high, would violate even the narrowest concept of free speech.

In fact, by this standard, to violate the sanctity of a noisy and excited gathering, a substantial breach of the peace, would be required before punishment could be justified. Commonwealth v. Hoxey, supra. The incidental noise created by the bumping of a limp body as it was dragged out of a room could hardly be called a breach of the peace under any circumstances.

Nor should it be overlooked that Mr. Walsh ordered Callender ejected and arrested without direct warning (3a-37-41) or any serious disturbance (3a-44-4a-5) or time lapse (4a-5-6). Under any construction of the statute this circumstance precludes conviction.

B. NJSA (1952) Chap. 2A:170-28 on its face and as applied is unconstitutional.

The doctrine is well established that:

> "It is our tradition to allow the widest room for discussion /and/ the narrowest range for its restriction, particularly when the right is exercised in conjunction with peaceable assembly." Thomas v. Collins, 323 U.S. 516, 530, 65 S.Ct. 315 (1944).

These words express the general tenor of First Amendment protection particularly in situations of the sort involved here.

(1) The statute is unconstitutional on its face.

NJSA (1952) Chap. 2A:170-28 is unconstitutionally vague because it fails to define adequately the conduct against which it is directed or the places protected. As drawn, the statute could be, and is here sought to be applied to all manner of meetings. [Very little conduct fails to annoy or disturb someone. In this record, there is no proof that anyone was in fact disturbed in any substantial or significant way.] The statute deals equally with conduct clearly de minimis and with total disruption. Such a statute cannot stand, even passing the point that it invades the protected precincts of the First Amendment.

this doesn't relate to unconst'l on its face

Walsh?
This goes back
to question of
bearing a
violation if
asked illegally
Certainly if he
hollared in
way out even
though asked
to leave improperly
there probably
violation

Far more narrowly drawn statutes than that of New Jersey have, in fact, been found unconstitutional infringements on the rights of demonstrators in situations in which far more noise and disturbance has been created than in the present case. Edwards v. South Carolina, 372 U.S. 229, 83 S. Ct. 680 (1962); Henry v. Rock Hill, 376 U.S. 776, 84 S. Ct. 1042 (1964); Fields v. South Carolina, 375 U.S. 44, 84 S.Ct. 149 (1964); Cox v. Louisiana, -- U.S. --, 85 S.Ct. 453 (1965).

In fact, these cases have held that the failure of a "disorderly conduct" statute to have a breach of the peace limitation, that is, a standard which reconciles the restriction on conduct with the protection of the First Amendment, renders the statute unconstitutionally vague. Cox v. Louisiana, supra.

(2) The statute is unconstitutional as applied.

Callender's very presence at the meeting was in furtherance of a legitimate goal. Thornhill v. Alabama, 310 U.S. 88, 60 S.Ct. 736 (1939); Sinn v. Tile Layers' Protective Union, 301 U.S. 468, 57 S.Ct. 857 (1937); Edwards, supra; Fields, supra; Henry, supra; Cox, supra. The meeting was public and he chose to attend. He had the right to speak and the right to hear. Walsh could not capriciously deny Callender the right to attend. As here applied, the statute is a tool by which public authority can silence opponents. Callender was singled out by Walsh who did not eject the many others who made far more noise than Callender. So to utilize the statute, without uniform standards of conduct or application, is plainly unconstitutional. Garner v. Louisiana, supra; Cantwell v. Connecticut, 310 U.S. 296, 60 S. Ct. 900 (1940).

POINT II.

THE CONVICTION OF THE DEFENDANTS UNDER NJSA (1952) CHAP. 2A:170-29 (2) (b) FOR CONDUCT OUTSIDE THE COUNCIL CHAMBER WAS AGAINST THE WEIGHT OF THE EVIDENCE AND THE APPLICABLE LAW.

A. Conviction of defendant Callender for remaining where the police placed him cannot be sustained.

After Callender was dragged from the Chamber, he was placed in the corridor outside. When he arose in order to depart, he was instructed by a policeman to remain where he was. (38a-34-36) Some testimony indicates that the policeman pushed Callender back into a seated position. (38a-34-36). Thereafter, according to police testimony, he remained where he had been instructed to remain until the police removed him from the building. (20a-10-12). This is the record on which Callender was convicted. No legal argument can deal adequately or seriously with the conviction of a person for "obstructing" a place which he occupied against his own wishes at the direction and under the supervision of police officers in whose custody he then was. See Cox v Louisiana, supra.

B. The conviction of the other defendants was against the weight of the evidence and the applicable law.

(1.) There is no credible evidence that defendants "obstructed" a public place within the meaning of the statute.

The statute specifically defines the offense as obstructing a place so as to inconvenience any person. No proof meeting the statutory standard was offered.

The record shows that one, and only one, person even claims to have been inconvenienced, but there is no showing that he was intentionally obstructed. Mr. Maziarz never asked anyone to get out of his way, and he was able to get past the defendants. Mr. Maziarz's testimony is, incidentally, entirely uncorroborated. The people's witnesses did not see the incident and defendants do not recall seeing Mr. Maziarz at any time.

The record shows that no other person who sought to enter or leave the Council Chamber during the time defendants were in the passage was obstructed or annoyed. There was ample testimony that many persons entered and left the Chamber without difficulty during the relevant time. The record also shows that others were in the passage.

Further, defendants had every right to be in the passage, both as persons interested in the Council hearings and as friends of Callender, who was being detained there.

Even after the defendants had sat down outside the Council Chamber they (except Mr. Callender) were told that they could leave. (60a-13-8). Since it was deemed by police that their conduct prior to this point was not worthy of arrest, and since there is no indication in the record that they subsequently behaved differently, it appears that there was no basis for their arrest or their conviction. Furthermore, the order that defendants leave the building violated their right to remain.

The offense charged requires an intent. The conduct of the defendants furnishes no basis for an inference of intent to obstruct anyone. On the contrary, their conduct is consistent with the intent lawfully to excercise their rights. In the absence of facts from which the guilty intent can be inferred, the conviction is not to be sustained.

In all of the above respects, the state failed to prove the guilt of the defendants beyond a reasonable doubt.

Although the New Jersey disorderly persons statutes are "quasi-criminal", the

> "rules of the criminal law are applicable to prosecutions under the disorderly persons law." O'Regan & Schlosser, Criminal Laws of New Jersey, Vol. 2, §1787. State v. Labato, 7 N.J. 137 (1951); State v. Rodgers, 91 N.J.L. 212 (E. & A. 1917).

Disorderly person prosecutions involving more than one person can not be "jointly" conducted where the offenses are "several and distinct." In Handlin v. State, 16 N.J.L. 96 (1837), a conviction under § 170:28 for disturbing an assembly was overturned for this reason. In the Handlin case, a joint summons and complaint was used, joint offenses were charged, and the defendants were jointly convicted. In the present case, too, proof of "obstruction or interference" against each defendant, is required, and there was not even the attempt to bring it forward. No general showing that defendants were a group of some of whom may have formed an obstruction would be sufficient. None of the witnesses at the trial, however, were able to authoritatively identify which defendants obstructed the entrance to the City Council Chamber (4a-24-29; 10a-15-18; 10a-31-34; 19a-42-49; 29a-12-19)

no conspiracy charged, nor is there a statute which requires a group of people blocking and the Court made no effort to examine the manner in which each defendant contributed, separately and distinctly, if at all, to the obstruction.

(2) The statute, properly construed, cannot be applied to defendant's conduct.

The only person who in any way claimed to have been impeded by the presence of the defendants outside the Council Chamber was Mr. Maziarz, and he only claimed to have been delayed for "less than a minute" (10a-35-37). Furthermore, there is no indication that he asked anyone who might in any way have been blocking him to move out of his way.

This means that no person was in any way interfered with beyond the mere inconveniencing of Mr. Maziarz. The statute should not take cognizance of mere "inconveniencies." People v. Nixon, 248 N.Y. 182, 161 N.E. 463 (1928). Thus only such obstructions which constitute disorderly conduct are punishable. In the Nixon case, supra, the New York Court of Appeals noted that:

> "Men and women constantly congregate or walk upon the streets in groups, quite oblivious

> to the fact that to some degree they are thereby causing inconvenience to others using the street."

Such "obstructions" are not cognizable by the Court, because, they do not constitute disorderly conduct or breach of the peace.

Even in cases in which there was a real obstruction by active conduct as in the Nixon case where the defendants were arrested for marching along the street four abreast and pedestrians were "just barely getting through," there was no disorderly conduct and no breach of the peace and hence, no punishable act. Breach of the peace has been defined as a:

> "...disturbance of public order by an act of violence or by any act likely to produce violence, or which by causing consternation and alarm disturbs the peace and quiet of the community." Cantwell v. Connecticut, supra, at 308.

When charged with disorderly conduct:

> "...the defendant may...raise any defense which negates the existence of any of the elements of the offense of breach of the peace." Wharton's Criminal Law, supra, at 663.

Thus only an act which "obstructs or interferes" to the extent of creating a breach of the peace may be punished under NJSA (1952) Chap. 2A:170-29(2)(b).

(3) The statute is unconstitutional on its face and as applied.

A failure to limit the statute to breaches of the peace would render it unconstitutional on its face. Edwards v. South Carolina, supra; Fields v. South Carolina, supra; Henry v. Rock Hill, supra; Cox v. Louisiana, supra; Cantwell v. Connecticut, supra. The statute is in any case far less precise than others found to be unconstitutionally vague.

In Cox v. Louisiana, supra, the Supreme Court recognized that the street was completely blocked by the demonstrators, but nonetheless overturned the convictions. The Louisiana statute is remarkably similar to § 170:29(2)(b) involved in this case:

> "Obstructing Public Passages. No person shall wilfully obstruct the free, convenient and normal use of any public sidewalk, street, highway, bridge, alley, road or other passageway, or the entrance corridor or passage of any public building.../etc./ by impeding, hindering, stifling, retarding or restraining traffic or passage thereon or therein."

As in this case, the defendants in the Cox case intended to petition for a redress of grievances. It was not the purpose of either the defendants in Cox, or here to obstruct traffic. As regards the purpose of the demonstrators in the Cox case, the Court said:

> "In upholding appellant's conviction under this statute, the Louisiana Supreme Court thus construed the statute so as to apply to public assemblies which do not have as their specific purpose the obstruction of traffic. There is no doubt from the record in this case that this far sidewalk was obstructed, and thus, as so construed, appellant violated the statute."

The unbridled discretion of police officers and their application of such broad statutes to conduct such as that of the defendants in the present case was analyzed by the court:

> "The pervasive restraint on freedom of discussion by the practice of the authorities under the statute is not any less effective than a statute expressly permitting such selective enforcement." Cox v. Louisiana, supra, at 466.

Thus the Louisiana statute was held to be unconstitutional on its face.

In State v. Furino, 85 N.J. Super. 345 (1964), the defendant was convicted for obstructing a police officer by the use of physical force. In that case a breach of the peace was apparent.

The statute is in any event unconstitutional as applied. In the present case, no breach of the peace was even remotely suggested. The defendants committed no act from which an inference of an intent to obstruct or breach the peace could properly be drawn. Thus, the conduct of the defendants was constitutionally protected. Application of any statute, clearly drawn, to make their conduct unlawful would violate their right to petition, freedom of assembly, and freedom of speech. As stated in the Edwards case, supra, (at 236), defendants' peaceful conduct is:

> "...protected against censorship or punishment unless shown likely to produce a clear and present danger of a substantive evil that rises far above public inconvenience, annoyance or unrest." (Emphasis supplied).

The conduct of the public authorities in this case was designed to silence persons known to oppose the John Fitch Way project. The utilization of a statute designed to preserve free expression and good public order for the purpose of denying to any person his constitutional rights cannot have the approval of this Court. The preservation of law and order demands that first and always the guardians of the law obey it. Here the law has been abused by its official defenders: the persons protected by the law have been oppressed. To sustain that oppression is neither palpable nor possible.

CONCLUSION

Wherefore, it is respectfully submitted that the judgment of the Hon. J. Wilson Noden, Judge of the Mercer County Court, Law Division-Criminal, convicting Herbert E. Callender of violating NJSA (1952) Chap. 2A:170-28 and Louis S. Smith, Herbert E. Callender, Marva L. Amis, Lily R. Lewis, Willard D. Crittendon, and Joyce L. Schurik, of violating NJSA (1952) Chap. 2A:170-29(2)(b) be reversed.

Respectfully submitted,

Fox, Yanoff & Fox
Attorneys for Appellant

By David I. Fox,
A Member of the Firm.

Stephen M. Nagler,
Carl Rachlin,
George Schiffer,
Of Counsel.

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MERCER COUNTY COURT
Case #987

THE STATE OF NEW JERSEY,)

Plaintiff-Respondent,
)
vs. Criminal Action
)
LILY R. LEWIS, MARVA AMIS,
LOUIS S. SMITH, JOYCE L. SCHURIK,)
WILLIARD D. CRITTENDON, and
HERBERT E. CALLENDAR,)

Defendant-Appellants.)

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that the defendants, Lily R. Lewis, of 46 Arden Avenue, Ewing Township, New Jersey, Marva Amis, of 4285 Leidy Avenue, Philadelphia, Pennsylvania, Louis S. Smith, of 1821 Fillmore Street, San Francisco, California, Joyce L. Schurik, of 1541 Metropolitan Ave., Bronx 62, N.Y., Williard D. Crittendon, of 48 W. 125th Street, New York, New York, and Herbert E. Callender, of 48 W. 125th Street, New York, New York, defendant-appellants, hereby appeal to the Appellate Division of the Superior Court of New Jersey from the judgment of the Mercer County Court, which is set forth below, and was entered against all defendants on February 9, 1965.

All defendants were charged, by complaints in two counts under the Disorderly Persons Act originating in the

Municipal Court of the City of Trenton, with noisy and disorderly conduct and disturbing and interfering with the quiet and good order of a public meeting on November 5, 1964, at the City Hall in Trenton, New Jersey, in violation of N.J.S. 2A:170-28, and with obstructing and interfering with persons lawfully at the meeting in violation of N.J.S. 2A:170-29 (2-b).

On February 9, 1965, the Honorable J. Wilson Noden, of the Mercer County Court, ordered all defendants except Herbert E. Callender acquitted of the charge of violation of N.J.S. 2A:170-28, and imposed a fine of $100.00 against Herbert E. Callender for violation of that statute; in addition, the Honorable J. Wilson Noden ordered all defendants convicted of the charge of violation of N.J.S. 2A:170-29 (2-b) and imposed fines of $100.00 against all defendants except Herbert E. Callender, who received a fine of $200.00. The fines have not been paid.

DATED - May 10, 1965

ORIGINAL ENDORSED
FILED
May 10, 1965

/s/
County Clerk

FOX, YANOFF AND FOX
Attorneys for Defendant-Appellants

By /s/ David I. Fox
DAVID I. FOX
A Member of the Firm

I hereby certify that on May 10, 1965, the requirements of R.R. 1:2-8(e) were complied with.

A True Copy

/s/
County Clerk

FOX, YANOFF AND FOX
Attorneys for Defendant-Appellants

By /s/ David I. Fox
DAVID I. FOX
A Member of the Firm

Service of a copy of the within Notice of Appeal is hereby acknowledged this 10th day of May, 1965.

PROSECUTOR OF MERCER COUNTY

BY /s/ David J. Schvoth

Service of a copy of the within Notice of Appeal is hereby acknowledged this 10th day of May, 1965.

HONORABLE J. WILSON NODEN

BY /s/ J. Wilson Noden

Filing of original and one copy of this Notice of Appeal is hereby acknowledged this 10th day of May, 1965.

MERCER COUNTY COURT

BY /s/

EXCERPTS OF TESTIMONY

(1-1) MERCER COUNTY COURT
LAW DIVISION (CRIMINAL)
APP. 19-64 (987)

THE STATE OF NEW JERSEY)
)
vs.)
)
LOUIS S. SMITH, HERBERT)
E. CALLENDER, MARVA L.)
AMIS, LILY R. LEWIS,)
WILLIARD D. CRITTENDON,)
JOYCE L. SCHURIK,)
Defendant-Appellants.)

PARTIAL TRANSCRIPT

BEFORE: HONORABLE J. WILSON NODEN

PLACE: MERCER COUNTY COURTHOUSE
TRENTON, NEW JERSEY

February 8, 1965
February 9, 1965

- -

APPEARANCES:

VINCENT PANARO, Esquire, Prosecutor of the Please of Mercer County, by EDWARD J. PHELAN, Esquire, Assistant Prosecutor of Mercer County, attorneys for the State of New Jersey.

FOX, YANOFF & FOX, Esquires, by DAVID I. FOX, Esquire, attorneys for the Defendant-Appellants.

- -

Stanley H. Maziarz, for the State--Direct

* * *

(Commencing at 3-24)

STANLEY H. MAZIARZ, called as a witness by the State, being (4) duly sworn, takes the witness stand and testifies as follows:

Direct examination by Mr. Phelan:

* * *

(5-6) Q. Could you relate to this Court exactly what transpired on that particular evening? A. About halfway through the meeting, which that evening lasted till about 11:30, this was probably about 9:30, Odell Bradley was -- just approached the microphone in front of the City Council, which is on the floor level.

Q. Who approached? A. Odell Bradley

Q. And who is Odell Bradley? A. Odell Bradley was a resident from Lamberton Street and responded to a comment by the President, President Walsh of Council, as to whether any residents of the John Fitch Way Area wished to testify on the piece of legislation that was before City Counsel --

Q. Yes, sir. A. -- and as Odell Bradley began to speak, Mrs. Lewis, who had been at the microphone, had just returned to the far end of the council chamber where four or five other people were seated, and it appeared that some conversation, not audible to the podium but loud enough to distract the President who (6) was then presiding, the Council and people in the chamber, in fact Odell Bradley who was speaking had taken place before or among this four or five people. At that moment President Walsh stated that quiet will have to prevail in the meeting room in order that everyone that wants to be heard on the piece of legislation would be heard, and anyone interrupting the meeting would have to be invited out. At that moment Mr. Callender, who I didn't know at the moment, at that time, but I do know him now --

Q. Is he present in the courtroom? A. Yes, he's in the back seat there. He stated, "We haven't started to disrupt your meeting yet." So the President called to Officer Downing to escort the individual out of the meeting room. And Officer Downing walked over to where these five or six people were sitting and appeared like he was speaking to Mr. Callender. Now, you couldn't hear his conversation, but he left Mr. Callender for a moment or two and started to walk up the chamber towards the door, and at the same time Sergeant McDonough was walking towards Officer Downing and they both went back to the point in seating where the five or six individuals who were grouped together were and spoke to Mr. Callender. Again the conversation was not audible at the podium. Mr. Callender was still sitting, but he was then sort of (7) sitting in a slouched position, and the four or five people around him started to chant, "Freedom," the word, "Freedom." At the same moment the two officers tried to lift Mr. Callender from the seat, but he certainly wasn't going willingly, and they had a little problem in lifting him because he's a pretty big boy. As they got him out of the seat he sort of fell to the floor or slid to the floor and just laid there for a moment or two, or maybe ten or fifteen seconds, and then one officer took him by his feet and the other took him by his arms and they sort of half dragged and half carried him out of the meeting chamber and deposited him in the corridor or the entrance into the chamber. When this happened the four or five people that were with Mr. Callender also walked out and the doors to the chamber were then closed. These doors are never closed, but since the four or five people, or five or six people, then were out there the doors were closed by one of the policemen.

By Mr. Phelan (continuing):

Q. Was there any speaking going on at this time? A. Speaking from who?

Q. From this group of individuals, Callender and the four or five that followed him. A. Well, as Mr. Callender was being dragged out and the other four or five got up, no, there was no discussion. (8) They had chanted, "Freedom," I guess four or five times, and they all got up and started to walk out when Callender was being taken out by the police.

Stanley H. Maziarz, for the State--Cross

Q. After -- A. (Continuing) When the doors were closed President Walsh started the meeting over again, but I walked over the podium and went up the middle of the chamber and out the door which was closed to the meeting room. And I had difficulty in opening the door, it's a double door, and the reason was that when I walked out I could just about squeeze out the four or five or six people were sitting on the outside of the door, that is, in the corridor on what would be the outside side of the door leads into the chamber.

* * *

(11-12) Q. Very well. Would you continue. A. (Continuing) I eased my way back through the left door back into the chamber. As I was walking by I noticed that the two officers were still there. And then our Director of Public Safety McBride was there. So I felt they certainly could handle the matter and went back into the meeting. Since the door was closed behind me, as I walked in I then went to the podium and the meeting was continuing. If I remember correctly, Mr. Bradley was still discussing the matter that was under discussion before City Council.

* * *

(12-1) Cross examination by Mr. Fox:

Q. Mr. Maziarz, when you were sitting aththe podium, did you notice the group who you say were chanting, "Freedom"? A. Yes.

Q. Do you remember how many people were in that group? A. The whole group consisted of six. When Mrs. Lewis was at the podium I felt -- first appearance it appeared like there was four or five people. When she returned back there that's where I get the number five or six people.

Q. So you remember there were six people who were chanting, "Freedom"? A. No, I don't know how many people were chanting, "Freedom." Some of the people out of that group were chanting, "Freedom."

Q. Out of what group? A. Out of the five or six people sitting there.

Stanley H. Maziarz, for the State--Cross

Q. Sitting where? A. Well, as you walk into the chamber on the far right-hand side of the chamber.

Q. You say some of the six that were sitting in that area were chanting,"Freedom"? A. Right.

Q. That means others of the six were not chanting, "Freedom," doesn't it? A. Well, I don't know how many, whether all six were chanting, or two or three.

(13) Q. If you say some were, doesn't that mean some were not; wouldn't you say all were chanting, "Freedom," if you meant all? A. I couldn't tell whether everyone was responding.

Q. You don't know how many were chanting, "Freedom," do you. A. I would say some of them were chanting, "Freedom."

Q. Some. Do you remember which ones were chanting, Freedom"? A. Not particularly because it was just coming from that section.

"Freedom" irrelevant

Q. So you can't identify specifically who said, "Freedom," and who didn't say, "Freedom," can you, sir? A. Well, at the point of the meeting where I was you'd have to be closer to the people to see whose lips were moving and whose were not.

Q. You, yourself, couldn't do that, could you? A. No, I'd say not.

Q. Do you remember how many people were sitting in the area in which this group with Mr. Callender was? A. In that immediate area there wasn't any people. This group just seemed to be together.

Q. Were there more than six? A. No.

Q. The six people you referred to, are these the (14) six people you just identified? A. Yes.

Q. These were the only people in that area of the auditorium? A. Within three or four seats of each other, yes.

* * *

(18-17) Q. But the conversations you heard at that time, or the sounds audible, they were no more audible than conversations elsewhere in the room? A. I don't know if there was any other conversation in the room.

Q. At other times during the evening? A. Even at other times.

Stanley H. Maziarz, for the State--Cross

* * *

(23-21) Q. Weren't there groups there that evening with signs; for instance, didn't one group have a sign of NAACP and other legends? A. Now that you mention it, I think there were some placards at the beginning of the meeting.

(24) Q. Do you remember where they were -- were they on the side where these defendants were? A. They were in on what would be my left of the meeting chamber.

Q. Was that the section where these defendants were? A. But they were separated, incidentally, by that aisle that runs up.

Q. So they were in another section? A. Yes.

Q. Were there any other groups with placards? A. Not that I recall.

Q. Had these groups presented speakers on this issue? A. Yes.

Q. And was there any applause or response from the audience when these people were heard? A. Well, an applause may have taken place.

Q. Were there any other sounds other than applause that you remember when this took place? A. Not that they distracted the meeting, if there was any. For that reason I wouldn't say there was any other sounds.

Q. When Mr. Callender was removed from the room, did the meeting stop at that time? A. Yes. It wasn't -- all right. I'll just say yes.

Q. Did the speaker stop speaking? A. Yes.

(25) Q. That was Mr. -- A. Bradley.

Q. -- Bradley? A. Odell Bradley.

Q. How long did he stop speaking? A. Well, from the time the President ordered Mr. Callender removed until the time he was removed, it may have been three or four minutes.

Q. Did Mr. Walsh then ask that the meeting be interrupted for a brief period of time after he ordered Mr. Callender removed? A. Well, he didn't ask. It was just a natural thing when a man was being removed and the police were scurrying about the room, you certainly couldn't hold a meeting probably.

Q. It was at Mr. Walsh's request that Mr. Callender be removed? A. That's right.

Q. When it resumed, I take it Mr. Walsh ordered it be resumed? A. Yes. He invited Mr. Bradley then to proceed.

Q. The total interruption was three or four minutes, is that right? A. In the chamber.

Q. I'm talking only about the chamber. A. All right.

(26) Q. Other than these three or four minutes the meeting proceeded both before and after in a normal fashion? A. Yes, I would say so.

* * *

(29-21) Q. Did anybody else go out those doors before you did at that time? A. I wouldn't want to say yes or no because I didn't particularly notice.

Q. On the other hand, you didn't notice anybody who (30) had any particular problems in getting out those doors before you did, did you? A. Well, most people who were at that meeting stayed and probably had no reason to go out those doors at the moment.

Q. You didn't notice anybody try to go out say they couldn't get out, did you? A. If they had the same experience I did they would have been able to get out.

Q. I am asking what you observed. Did anybody complain to you he wanted to get out and couldn't get out at that time? A. He wouldn't complain to me.

Q. Did he complain to anybody you know of? A. I don't know.

Q. That means you don't remember there were any complaints?

Mr. Phelan: I'll object to that, your Honor. Now, he's starting to draw conclusions again. The man has answered the question, Mr. Fox. He says, "I don't know."

Mr. Fox: I'm not clear what he means. I simply asked him does he remember if there were any complaints or not.

Mr. Phelan: He said there were no complaints registered to him. Can that (31) be more specific?

Mr. Fox: All right. If that's his answer, that's his answer.

Stanley H. Maziarz, for the State--Cross

* * *

(31-17) Q. Did you have difficulty getting out that right-hand side? A. Yes. The door didn't open.

Q. If you had difficulty there why didn't you try the other side? A. Well, I was able to open that door enough on the right side. As I looked through the opening there was people sitting against the other door, so I couldn't possibly open that one.

Q. You mean people had their backs or feet, or some (32) other parts of their body, next to the door on the left-hand side? A. Well, as I eased my way through that opening, they were in a circular position. There was about six people in a circle.

Q. In front of which door, sir? A. In front of both doors, but mostly on the left of those two doors. The right door with difficulty could be pushed or about three or four -- well, no, about six or seven inches where you could squeeze through.

opened "inches"

Q. Do you remember who those people were? A. The same people that walked out with Mr. Callender and Mr. Callender also.

Q. You say they were sitting in a circle, who were the people closest to the door; do you remember? A. I don't know which of the six were closest to the door.

Q. How many people were close to the door and blocking it? A. Well, in a circle of that type you'd probably find about two or three people would be on one side of the circle and the other two or three making up the other half of the circle.

only two actually blocked door

Q. A complete circle, it wasn't oblong or anything? A. It was in a circular position, yes.

Q. Were the three people next to each other?
(33) A. Yeah.

Q. If they were in a circle perhaps you can explain to me -- Were they all equally distant from the door, these three people? A. Well, in a circle you will find -- well, actually it would be about two of them could have been in the closest position and the other two would certainly be moving out and the other two in the farther section or farther end of the circle.

Stanley H. Maziarz, for the State--Cross

Q. Wouldn't it be true just two people were blocking the door as you observed it?

Mr. Phelan: I'll object to that, your Honor. Again he's leading.
The Court: I'll permit it.
Mr. Fox: This is cross-examination.
Mr. Phelan: I know, but you don't have to lead.
The Court: Go ahead.

A. I would say in a group like that they were all blocking the door. Whether one or two were really on the door and the other two were removed, it was a general blockage of the door by the six people.

Q. Even the man on the far end of the circle, he was blocking the door, too? A. Well, he must be. He's part of the group. How are (34) you going to open the door even if two of them are there?

Q. I want to know --

The Court: Now, we're arguing.
Mr. Fox: All right.
The Court: The purpose is to get the facts from him as he knows them for my benefit.

By Mr. Fox (continuing):

Q. Which of the people came in contact with the door? A. I don't know which two because I didn't stop to discuss anything with anybody there. I just glanced at the situation, walked by them and went out the corridor.

Q. How long did it take you to get out that door, sir? A. Well, I wouldn't want to tell you it took me a half-hour. I'd say only a minute, maybe less.

Q. And how long were you away from the meeting room making your call? A. About three or four minutes.

Q. When you came back were those people in the same position they were in before? A. Yes.

Q. They were. Did you have some trouble getting in again? A. Normally I would come back on what would be the right (35) side of the door, but I couldn't possibly get near that because again the group was in the general area of this door. So I eased back through the left side, which was my right side of the door when I was going out. Coming back --

Q. The same door? A. Same door, that's right.

Q. Why didn't you use the other door? A. I couldn't get to it.

Q. Was it blocked completely then by people? A. Yes.

Q. Did you have to step over anybody to get through? A. No, I walked around.

Q. There was a space between these people and door if you walked around? A. With difficulty you could negotiate it, yeah.

* * *

(44-22) Q. After Mr. Walsh had asked Mr. Callender to be removed from the meeting room, did the noise level of the public rise at all -- were there conversations? A. No, no. I don't think there was anything there that (45) would have disrupted the meeting. I don't recall there was any.

Q. Didn't the people as you saw them murmur one to the other about what was happening -- did they remain silent? A. Amazing thing was there was no reaction that would appear they were upset.

Q. They remain absolutely silent then while all this was happening? A. Well, you have the turning around perhaps in the seat.

no talk by others

Q. Other than turning around they didn't say anything to each other? A. The people?

Q. Yes. A. I don't know if they did. If they did I certainly didn't hear it.

* * *

(46-19) FRANK V. WALSH, JR., being duly sworn as a witness, testifies as follows:

Direct examination by Mr. Phelan:

* * *

(47-23) Q. Would you describe to this Court the purpose of the necessity for calling upon the police? A. Yes, sir.

About approximately a half-hour after the (48) meeting started, which was about eight o'clock, there were -- we were then discussing, I think, two resolutions appropriate to John Fitch Way Area 3. I think one resolution dealt with the authorization of additional funds,as I recall, and another one pertained to the approval of relocation. The relocation proposal as was made up by the Department of Planning and Development. Normally we don't have a public hearing on resolutions of this nature, but we considered it to be an unusual resolution and a particularly important one to the City of Trenton. We had, I believe it was on this resolution, it had come up a month before and at the request of one of my colleagues we postponed it for one month because he indicated to us that certain aspects of the relocation proposal were challenged by some individuals or organizations in the community without identifying them. And he asked a month be given, delay, for purposes of these objectors to submit their objections in writing. So far as I know they were never submitted. As I say, about a half-hour after the meeting started, perhaps a little more, I noticed to my left, my far left, mumblings, noise, a distraction which I think was caused by conversation which wasn't discernible to me. I rapped the gavel and asked for order and then somewhat later, a few minutes later, from the same area there was another (49) expression which I heard, but once again I did not hear the particular verbiage. And I looked down in the area where Mr. Callender was sitting and I admonished the individuals in the council chamber and particularly those to my far left, that we had to have order in order to condult a public meeting.

apart warning

By Mr. Phelan (continuing):

Q. Was it interfering with the meeting? A. Yes, sir, it had been. And I admonished the people in attendance that if there were not silence we would have to ask them to leave or ask them to be removed by the sergeant-at-arms. And as an immediate reply or retort to that statement I was looking over at Mr. Callender, and Mr. Callender said, "We have not begun to interrupt your meeting yet," which I took to be a challenge, a threat, in addition to being a disturbance that more was to come. But I felt --

Q. What did you do? A. Then I asked, I believe it was, Officer Downing if he would come down and escort Mr.

Callender from the chambers. Officer Downing came over to where Mr. Callender was sitting and mentioned something to him, some conversation, brief, I didn't hear what it was, and I'm trying to get the sequence straight in my mind as much as possible. All of this happened so suddenly, Mr. Phelan, and your Honor, it is kind of hard to keep them straight. (50) I think at that time Officer Downing went back to Sergeant McDonough and they came over together. I think it was Officer Downing who tried to reach under Mr. Callender's arms to pull him up and he in the meantime locked his arms with the individual sitting next to him.

Q. Do you know who they were? A. No, sir, I don't know who they were.

Q. Could you identify them? A. I honestly can't, no. I probably wouldn't be able to identify Mr. Callender either, except he has appeared before City Council on several occasions since then without disruption or without any problems at all. And also at or about this time there was the singing of the expression, "Freedom; freedom." With that Mr. Callender slid down yet further, and Officer Downing and Sergeant McDonough grabbed him by the underarms and by the feet and carried him out. I think the carrying was described as a dragging. I don't remember that. I think he was fairly well carried out and deposited outside of the council chamber doors.

Q. What happened after that, sir? A. All during the time this was happening there was a gentleman who was a resident of Fitch Way was talking about the matter of Fitch Way there, was talking about Fitch Way 3 and relocation and his hopes to be able to find equal or (51) better housing for himself and his family. And the carrying out of Mr. Callender I found to be disruptive and certainly was distractive to me and others present.

Q. When they were removed from the chamber, do you know where they went? A. Yes, sir. The officers, as best I recall, deposited Mr. Callender outside of the Council doors, and estimating now, three or four feet, two feet perhaps, almost in the center --

2-4 feet

Q. What was the position of the doors at that time? A. They were wide open as they normally are.

Q. What happened to the other remaining group that followed? A. There were, I would have guessed, four or five, but I understand now it was exactly five people got up and left and followed Mr. Callender out. I don't believe, however, they were all seated together. I have the impression this young lady over here, I think it is Miss Schurik, is it, I had the impression she was sitting to my right and not over with the other individuals, and I also thought Mrs. Lewis was sitting off center but to the left. Now, this is my impression, my recollection. I don't think they were all seated together on the far left, but I think the others, other than the two I mentioned, were sitting with Mr. Callender or in close proximity with him. (52) And they followed him out and then sat down on the floor in a circular pattern, at least some of them linking their arms together.

Q. Could you make an observation of this -- A. Yes, sir.

Q. -- from your position on the podium? A. Yes, sir. It was a brief one but I noticed it. This was directly in front of me. Then shortly thereafter the doors were closed.

Q. That cut off your view, I presume. A. Yes, sir.

* * *

(52-14) Cross examination by Mr. Fox: * * *

(53-7) Q. You said there was a circle that they formed. A. Yes, sir. It may not have been a complete or more perfect circle, but it certainly was a pattern of circular seating.

Q. This to the best of your recollection was not against the wall, was it? A. I'd say it was directly in front of the door, as best I recall.

Q. After they sat there the doors were closed? A. I would say they were seated somewhere in the vicinity of a minute and the officer tried to close the door. In fact the officer had difficulty, as I recall, closing the doors.

Q. He did close them? A. Yes, sir. I don't know which officer, but one of the two.

Q. Did you watch him when he closed the doors? A. Sir, I would ask you to forgive me. I'm not trying to be evasive, but all the time this was going on a gentle(54)man that has been identified as Mr. Odell Bradley was at the microphone and I was trying to get Mr. Bradley to speak as loudly and distinctly as he could to minimize the disturbance and the distraction that was caused by Mr. Callender, his being called out. My attention was running between the disturbance itself and Mr. Bradley who was at the microphone. And I'm not trying to equivocate, but I want you to understand to some extent my opportunities to observe were disturbed between the two individuals.

Q. So because of that you'd say your observations were limited? A. Not necessarily limited, but certainly brief.

Q. I take it your observations were not crystal clear at that time. A. No, sir, they're not.

Q. Do you recollect, or not, observing someone close the door? A. Yes, I recollect that. I wouldn't testify to anything that I don't recollect rather clearly.

Q. I take it since you recollect rather clearly, what did you observe and what do you recollect when he closed the door? A. I observed he had difficulty. I'm not saying great difficulty, but he may have moved one of the individuals.

Q. Did you see him move someone? (55) A. This I do recall, Mr. Fox, that he was unable to swing the door freely. I'm quite certain that I recall that. In other words, he closed perhaps one door and had difficulty closing the other door. Whether he had to actually move the people physically, or ask them to move themselves, I don't know; or whether he was just able to squeeze by them, but there was some difficulty.

Q. As best you can recollect, he might have squeezed by? A. Perhaps just brushing against the individual.

Q. Just brushing. But during this whole incident or these incidents, the speaker continued to speak, is that right? A. Yes, sir, at my direction and request.

Q. There was no interruption then of a few minutes? A. There was a brief interruption. I don't think it was as long -- I don't think the whole episode took four minutes and, of course, I'm not trying to challenge Mr. Maziarz's testimony. My recollection is a little different than his. I don't think it was quite as long as that.

Q. I take it the interruption that did take place took place as a result of the removal of Mr. Callender. A. No, sir, I wouldn't say that. I would say it was the result of Mr. Callender's lack of decorum and breach of etiquette and lack of concern for the people of the City (56) of Trenton.

Q. The interruption that did take place was the result of the activity of Mr. Callender? A. Yes, sir.

* * *

(57-25) Q. The meeting then continued to conclusion in its (58) normal fashion? A. Yes.

Q. There was no interference as a result of the activities that took place outside of the hall? A. Shortly after they closed the door I would say the interference ceased.

Q. And the only person who did leave to your recollection, after the defendants left, was Mr. Maziarz? A. So far as I recall, yes, sir.

Q. He came back about five minutes later? A. A few minutes later.

Q. A few minutes later. Did you notice groups were making placards in the meeting hall? A. Yes, sir.

Q. Do you remember where those groups were? A. I'm sure one must have been the NAACP, but I don't recall any others.

Q. The only placards you remember were NAACP? A. I heard earlier testimony today. I would say I would suscribe to Mr. Maziarz's recollection that one sign may have had NAACP. Frankly, I couldn't tell you what those signs said.

Q. Directing your attention to that diagram, picture, whatever you call that, and to those six circles outside the door, do you remember which one of those was Mr. Callender? (59) A. No, sir, I wouldn't remember.

Q. Can you identify any of the defendants in relation -- A. No, sir, I'm sorry.

Q. -- to the particular circle? But that's accurate except for what you saw? A. Well, except what you mentioned earlier, scale. I wasn't here when Mr. Maziarz drew this. Do these --

Mr. Phelan: There is a pointer there, Mr. Walsh.

A. Do these represent the door (indicating)?

Q. I believe that's the two doors you are pointing out. A. My impression would be slightly different.

Q. Would you draw another diagram. A. Can I put it down here (indicating)?

Q. Yes. A. Frankly, Mr. Maziarz was in a better position to observe than I (drawing). If these were the doors, I would have the circle something like this (drawing), something like this. I would say the pattern or circle was slightly either within the size of the doors, the far sides of the doors, or maybe just about even with them. This is the last fleeting view that I had as the doors were being closed.

Q. But as far as you know, when the doors were closed they might have just brushed the people nearest them, nearest (60) the doors. A. That's my recollection, sir, because I remember the officer wasn't -- the sweep of the doors wasn't clear. He had to at least exercise caution lest he hit one of the defendants with the door, that may have been the delay, or he may have had to move them.

Q. Was this meeting any noisier to your recollection than any other meetings? A. Any what, sir?

Q. Noisier? A. No. There are occasions when a speaker, for example, may have something to say, especially take an example of a transfer of a liquor license where the spirit is high, a speaker may make a statement which is either very popular or very unpopular with the people there, and you sometimes get groans. It has been my experience, however, the last two and a half, three years, that strong rap of the gavel that terminates the difficulty and most people were very cooperative. But this wasn't -- I have a feeling that there was a round of applause before this took place, but I'm not sure.

Q. Did you remember applause taking place at other times during this meeting? A. I don't remember them, sir, but I certainly wouldn't deny that there may have been.

* * *

(62-5) ROBERT DOWNING, called as a witness by the State, being duly sworn, takes the witness stand and testifies as follows:

Direct examination by Mr. Phelan:

* * *

Robert Downing, for the State--Direct

(66-13) Q. Was there any conversation or any remarks between you and the individuals? A. Yes, sir. Well, once out in the corridor the sergeant and I informed these people that they were free to go, there was no charge placed against them and they could leave at their own free will, which they refused.

* * *

(67-3) Q. Looking at that diagram that Mr. Maziarz and Mr. Walsh have made marks upon, as meager as it is, do you recognize it? A. Well, I recognize it; yes, I do.

Q. And could you tell me the position that these six individuals occupied in the corridor immediately adjacent to the council chamber? A. May I go up?

Q. Yes, sir.

(The witness commences to draw).

A. I'll make another drawing (drawing). This would be going out of the assembly room. The doors when they're closed, you know, you would be like this and they would meet in the middle. When we first left the assembly room we placed Mr. Callender. There's a small wall, space in here (drawing). We placed Mr. Callender here and he was in a position where his knees was in a bent position. But then he stretched his legs out, bringing them here or more (indicating), depending upon his height how far. The other persons at first they were standing in a semi-circle here. When we were talking to them they were in this position, then they began to sit down, and as I can recall considered a half moon, a semi-circle gong around the doorway (drawing).

(68) By Mr. Phelan (continuing):

Q. There is no doubt in your mind that these six individuals did sit upon the floor outside -- A. None whatsoever.

MR. FOX: Objection, your Honor, to the leading form of that question.

THE COURT: I'll permit it. Go ahead. He's already answered it.

A. No doubt.

Robert Downing, for the State--Cross

(69-17) Cross examination by Mr. Fox:

Q. I take it, Patrolman Downing, that the positions of these defendants in the hall as you observed them were not the same as they were described by the other witnesses this morning. A. That's correct.

Q. Did you place Mr. Callender down against the wall? A. Well, I wouldn't say exactly against the wall. It was somewhere in that immediate area because once outside of the (70) room we just let him go, more or less.

Q. Was he near the wall? A. Yes, sir.

Q. Something, I take it, like you drew in that diagram? A. Yes.

Q. Were any of the others seated next to him? A. Yes. I can't identify which one between Mr. Crittendon or Mr. Smith, but one was sitting beside him.

Q. That would be to his left away from the door? A. Right.

Q. Was anyone else sitting beside him other than this person who may -- A. Beside whom, sir?

Q. Beside Mr. Callender and Mr. Crittendon? A. I don't recall, sir.

Q. Were the others in front of these two? A. At first, yes. They were in a standing position when they first left the assembly room.

Q. When they were standing, did they block the door then? A. To a certain extent, I'd say, yes.

don't know who blocked door.

Q. Which ones blocked the door? A. I don't recall which.

Q. Do you remember who blocked the door when they (71) were sitting? A. Well, Mr. Callender did block the door from his outstretched position.

Q. Anybody else? A. I don't recall.

Q. So as far as you know only Mr. Callender blocked the door, is that right? A. That I can recall, yes, outside of the diagram. I can't place the people where they were, but I know they were in that position blocking, you know.

Q. You only remember Mr. Callender as the one blocking the door? A. I remember Mr. Callender because I put him in an area near the door. The other persons came out and they positioned themselves around the door.

Q. Was the man seated next to Mr. Callender blocking the door? A. At first I would say no.

Q. Well, did he block the door at any time? A. When they changed position.

Q. Where was he before he changed position, this man next to Mr. Callender? A. When we first put Mr. Callender in the corridor this party sat beside him still locking his arms.

Q. Beside him, I take it near the wall away from the(72) door? A. Right to Mr. Callender's left.

Q. Was he blocking the door then? A. No, sir.

Q. Did he block it later? A. He was part of the group, yes.

Q. Did he, himself, block it and not the group? This man sitting next to Mr. Callender, did he block the door? A. He was part of the group. I cannot identify the man that was sitting next to Mr. Callender. So I cannot say whether he was the one that blocked the door or whether he didn't block the door. He was in the group that blocked the door.

Q. Who in the group did block the door aside from Mr. Callender? A. The five parties blocked the door.

Q. All five of them? A. They were in the position there so they might have blocked the door in some form.

Q. Mr. Downing, I am asking you not to tell me who might have, but as you observed it who did? A. I can't single the parties out name by name.

Q. Were all six people in such a position so that if the door were open their bodies would come into contact with it? (73) A. No; no, sir.

Q. They were not? A. It couldn't possibly be.

Q. So if the door were open some of them would not be blocking it, is that right? A. True.

Q. Do you remember how many would not be blocking it? A. Well, from the diagram you would assume the last two parties of that group wouldn't be blocking the door.

Q. Were they seated in the center of the hall? A. I would say yes.

Q. Were they seated in front of the door to the right as you leave the chamber? A. I would say the line of their bodies would extend somewhere to the right.

Q. There was one man next to Mr. Callender, were there any people in front of these two people, Mr. Callender and the man next to him? A. According to the diagram, yes.

Q. How many? A. I have five up there so maybe it was five.

Q. Were there seven in this group? A. There were six.

Q. Well, if there were two against the wall and you say there were five in front of them, wouldn't that (74) be seven? A. Sir, I stated a party was sitting next to Mr. Callender when we first positioned him in the corridor.

Q. At that time who were in front of these two, how many? A. At that particular time there wasn't any in front of him. They were standing more or less --

Q. After that when they were all seated, how many were in front of these two? A. I would say five, five of them were.

Q. They were in front of who? A. In front of Mr. Callender, period.

Q. Just Callender. Wasn't there at that time someone seated next to him? A. Sir, I think I stated Mr. Callender was seated alone after their positions changed. At first there was one gentleman beside Mr. Callender. The positions changed and Mr. Callender was back in that position by himself, the other five parties scattered themselves in the position I tried to diagram on the board.

Q. So they were all in front of him after that? A. Yes, sir.

Q. And some of them were in fact not in the position where the door would come into contact with them when it was opened? (75) A. Sir, if there's six people and the first one is by the door, if there's five people the fourth or fifth person couldn't be by the door.

* * *

(78-10) Q. How long did it take Mr. Maziarz to get out; do you know? A. Sir, I wasn't paying that much attention to Mr. Maziarz. I had five or six parties there I was about to place under arrest, so Mr. Maziarz was not my concern.

Q. Did you notice him leaving? A. Yes, sir.

Q. Do you remember the door he used? A. Sir, I stated I wasn't paying that much attention. I know he attempted to leave. Which door he tried to leave out of I cannot honestly say.

Q. Did you see anybody else go in or out at that time? A. Yes, sir, I did.

Q. Do you know who? A. I noticed persons coming out, yes.

(79) Q. Pardon me? A. I noticed persons coming out.

Q. What did they do to get out? A. I know they were strangers from the immediate group. They evidently had to try to get out or try to get in.

Robert Downing, for the State--Cross

Q. Did anybody open the door for them? A. I don't recall. I wasn't paying that much attention to them.

Q. You remember they did get in and out? A. They left the area after I seen them.

Q. Did they have any trouble getting in or out? A. I wasn't paying that much attention.

Q. Did they have any trouble getting in or out? A. I couldn't say, sir.

Q. Did you ask each of these six people to leave? A. Sir, we was talking to them in a group, so if I spoke to one I spoke to six.

Q. Did anybody complain to you he couldn't get in or out? A. No, sir.

no complaint

* * *

(80-5) Q. Now, other than sitting down outside of the hall and other than the remarks by Mr. Callender inside the hall, did these people act, to your observation, in any way that to your knowledge was unusually noisy or unruly? A. I would say yes.

Q. What did they do? A. You mean in the corridor?

Q. Either place. Well, let's direct your attention to inside the council chamber. Would you answer the question as to that spot. A. Yes, sir.

Q. What? A. Inside the chambers after and during Mrs. Lewis' statement to the Council, there was a little bickering from the groups seated to the right as you would enter this chambers.

Q. Was that unruly? A. I would say yes. It was more or less like a cheering gallery. I mean she was given her opportunity to address the Council. She made her statement, but she had some backers. That's the way I observed it.

Q. Was it applause? (81) A. There might have been. I can't recall as to whether there was any applause or not.

Q. What did they do -- did they shout? A. Well, it's just like if you make a brilliant statement, you know, you're going to get somebody that's going to say, "Yeah, yeah! That's telling them." It was in that nature, sir.

Q. They just responded as an audience? A. Yes, sir, backing this particular party.

Q. That wasn't unruly, was it? A. I'd say for a meeting, yes.

Q. Do you remember who did that? A. Well, it was the members of this group seated in this courtroom now, sir.

Q. Any others who did that, just these six? A. I don't recall whether it was, but I know the majority of the cheering came from this group.

Q. Did you at that time see the people who did that? A. At a glancing observation of the room. You know how you glance around.

Q. Where were you, in the rear of the room? A. I was in the rear, yes.

Q. So all you saw were backs of heads? A. No, sir.

Q. What else could you see? (82) A. You could see the side of these persons, a side view.

Q. You identified them from that view? A, Yes, sir.

Q. Was there any response from any other groups when their representatives spoke?

MR. PHELAN: I'll object to that, Your Honor. I believe it is immaterial. We're concerned with this group.

MR. FOX: I think we are concerned--
THE COURT: I'll permit it. Go ahead.

A. I don't recall.

Q. They never applauded during that whole meeting when people spoke? A. I do not recall applauding from other groups that someone spoke that they were more or less interested in.

Q. There was no applause during that whole evening?

THE COURT: He just answered it twice.

Q. Did you place Mr. Callender under arrest inside the meeting room? A. No, sir.

Q. Do you remember whether or not the man who was speaking at the time Mr. Walsh asked Mr. Callender, do you remember whether or not that man continued to speak? (83) A. Sir, I don't remember. My attention was to Mr. Callender, removing him. What was going on I wasn't concerned about at that time.

Q. You don't remember whether or not the meeting continued then as it had in the past? A. Well, right after I was directed to remove this gentleman from the room everything did become quiet. So evidently things must have stopped.

* * *

(83-16) JAMES J. McDONOUGH, called as a witness by the State, being duly sworn, takes the witness stand and testifies as follows:

Direct examination by Mr. Phelan:

* * *

(87-10) Q. Could you describe their position? A. Yes, sir, the position that Mr. Callender was in the second time when I'd come out when he stretched himself to the floor in a lying position other people had placed themselves on the floor in sort of a semi to nearly a full circle and interwound their arms and legs.

James J. McDonough, for the State--Cross.

(87-23) Cross examination by Mr. Fox:

Q. Who did it interfere with -- do you remember specifically anybody who tried to get out and couldn't get out? (88) A. No, sir, I don't recall anybody going in or out after I come out.

Q. So when you say it interfered, you are speculating in saying it might have interfered, aren't you? A. I would say if anybody had attempted to come in or out they would have had difficulty.

Q. But so far as you know, nobody tried to get out who couldn't get out, did he? A. No sir.

Q. Nobody tried to get in who couldn't get in, did he? A. That's right.

* * *

(90-21) Q. And some of them were seated. Do you remember how many were seated? A. Mr. Callender, and I wouldn't say Mr. Smith was seated but he may have been in a crouched position alongside of Mr. Callender.

(91) Q. Is that where he remained until he was removed? Did Mr. Smith remain in a crouched position next to Mr. Callender until he was removed from that spot by the police? A. No, he did not.

Q. How did he change his position? A. His position had also changed to a more outstretched position.

didn't remain crouched

Q. Well, was he next to Mr. Callender at that time? A. Yes, he was.

Q. Was he against the wall? A. No, he was not.

Q. Where were the others; was anybody in from of Mr. Smith -- Mr. Smith? A. Well, when I described this group I described it as being a semi-circle to a circle. So that it wasn't a matter of any one person being in front of the other, I would say.

Q. You mean they were all side by side? A. No. Side by side they wouldn't be in a circle.

Q. Side by side but in a semi-circle? A. Semi-circle to a full circle, yes.

Q. Side by side no one behind the other? A. In front of one another, one alongside of another, both positions.

Q. I don't understand. If they were in a circle, can you explain some were in front and some were on the(92) side of one another? A. Using Patrolman Downing's diagram here where Mr. Callender was against the wall, Mr. Smith was to his right. And then when I come out of the Director's office using the phone the second time, they were to the right and in front of each other.

Q. You mean there was somebody in front of Smith and Callender? A. Yes, sir.

Q. Who? A. After they started interlocking arms and legs, I couldn't identify the person in front of them.

Q. Was there anybody to their left? A. I'd say not to the immediate left, but as you would be forming a circle there was somebody to his left, yes.

Q. How far away from those doors was the man on the extreme outside part of the circle? A. I would say with legs outstretched and everything, maybe five to six feet.

5-6 feet

Q. How close to the doors was the man nearest to the doors? A. I would say two to three feet.

2-3 feet man nearest door

Q. Was anybody in front of that second door on the right? A. Yes, sir.

(93) Q. Do you know who that was? A. No, I don't.

Q. Do you know specifically who was in front of the door on the left? A. I would say Mr. Callender and Mr. Smith were more.

Q. Apart from them, you don't know who was in front of that door? A. No, I do not.

Q. Do you remember the speakers, the other speakers than the man who was speaking, do you remember there were other speakers than the man who was speaking when this incident took place? A. There was another gentleman after this lady over here had left her place in front of the microphone, another gentleman got up and started to speak.

Q. Was there any audience reaction of any kind to his speech? A. Not that I know of.

Q. No applause? A. No applause.

Q. Was there applause to any of the other speakers?' A. Sir, I was not in the council chambers all during this.

Q. Were you there when Mrs. Lewis spoke? A. Yes, sir, I was.

Q. Was there any applause when she spoke? (94) A. I couldn't describe it as applause, but favorable reaction, I would say.

Q. Were there any favorable reactions to other speakers? A. Not that I know of.

Q. Did you notice any placards for the NAACP or other groups? A. There were placards, sir, but I couldn't describe what they were.

* * *

(96-20)JAMES E. McKEEVER, called as a witness by the State, being duly sworn, takes the witness stand and testifies as follows:

Direct examination by Mr. Phelan:

* * *

(97-12) Q. And as a result of your arrival at the City Hall, will you please tell this Court what you observed upon your arrival? A. Upon arrival at second floor level, City Hall, outside of City Council Chambers, which has been described many times here this morning, I observed five people, two men and three women, sitting in a circular or oblong position outside of the doors that led into the council chamber.

Q. In a seated position? A. Yes, sir. They were seated some with their legs outstretched, some had their legs interlocked, and all had their arms interlocked one to the other to the person on either their right or their left.

Q. You say there were five people? (98) There were five, sir.

Five people

Q. And what did you then do, Sergeant, if anything? A. Well, about that juncture Sergeant McDonough came back up from the first floor level, and I discussed the matter briefly with him and he apprised me that people had been asked to leave and refused to leave. And I went over and spoke to them and I asked them all collectively, first collectively, and I asked each one individually to leave.

Q. What was their reply? A. There was no reply nor was there any effort to leave.

* * *

(99-20) Cross examination by Mr. Fox:

* * *

(100-1) Q. Other than your observation of these individuals seated and not moving outside the doors, is there anything else that they did that was in any way unruly, noisy and let's say disorderly? A. No, sir, nothing other than blocking the doorway.

Q. They were just seated? A. They were seated, as I stated, in a circular -- I wouldn't say a perfect circle. I feel it was more of an oblong position. They all had their arms locked one to the other to the person on their right or left as I testified here, and some I can't say exactly whom, but some of their legs locked.

Q. Did you see anybody try to go in and out of that door while you were there? A. No, sir, I did not.

Q. Can you identify the six defendants here in relation to their specific positions outside that door? A. Specific positions?

Q. Yes. A. No, sir, I cannot. I didn't see the six defendants. I only saw five. And for the clarification of the Court, I'll state here I did not see Mr. Callender. I saw the other five defendants.

Q. You observed the five in an oblong position. A. In a circular position, not a perfect geometric circle. They were in a circular position.

(101)Q. How far away from the doors was the man at the end of the circle who was farthest from the door, how far in feet? A. Perhaps five feet.

Q. And how close to the door was the man or woman who was closest? A. My estimate would be within ten or twelve inches, and there was more than one, there were at least two.

Q. There are two doors there, are there not? A. That's correct.

Q. Were they in front of both doors? A. They were.

Q. Were any of them directly in front of any other one of them? A. Not when I observed them. Other than their legs, some of them having their legs out entwined into the next person's legs. If that would be construed to be in front, they were in front.

Q. As you observed them they were side by side? A. Yes, sir.

Q. So as to form a circle or semi-circle? A. Yes, sir.

Q. Was it a complete circle? A. It was a complete circle.

Q. Then the diagram as Patrolman Downing drew it (102) isn't entirely accurate as you remember it, is it? A. That is not my recollection.

Q. So you saw five people in a complete circle? A. Yes, sir.

* * *

(102-10) GERALD J. GUADAGNO, called as a witness by the State, being duly sworn, takes the witness stand and testifies as follows:

* * *

(104-5) Cross examination by Mr. Fox:

Q. Patrolman, did you say to these people, or someone say in your presence, "If they voluntarily left there would be nothing further done"? A. They were told that, yes.

Q. Would that include all defendants? A. As a group, yes.

Q. Include Mr. Callender? A. Yes.

* * *

(104-24) Q. Were these people seated then in a semi-circle when you arrived? (105) A. My description it would be like a cluster, sort of open webbed type of cluster.

Q. Can you describe that for us then? A. Well, it would be like an intertwining sort of thing. If you tried to get through it, you would have to do sort of a hop or step up high with your knees and all.

Q. Were any of them against the wall? A. I can't recall if they were against the wall or not. They might have been pretty close to it though.

Q. Were they all close to one wall? A. No they were spread all over the entrance of the chamber entrance there.

Q. In this cluster that you describe with one next to the other? A. A couple of them could have been next to each other, yeah.

Q. Do you remember any of them being next to each other? A. Yes. There were some that were next to each other, but I can't tell you which one was next to each other.

Q. One was by the side of the other? A. Yes.

Q. Do you remember how many were side by side? A. There could have been at least four of them.

Q. Where were the other two? (106) A. They were intertwined within that group.

Q. In front of the four who were side by side? A. In front of or in back, either one it could have been.

Q. These four who were side by side in a cluster, were they -- did they have their backs to a wall? A. Well, like I say, I'm not sure four were side by side or not. It appeared to me it was like a cluster there.

Q. This group in a cluster, did they have their backs to a wall? A. Yeah, some of them did.

Q. How many? A. I can't say how many,

Q. More than three? A. I couldn't say that.

Q. But some of them did? A. Some of them had their backs to the wall, yeah.

Q. Was it more than one? A. Yes, definitely more than one.

Q. Was it at least two? A. At least two.

at least 2 had backs to wall

Q. Could it have been more? A. Yes.

Q. Which wall is that -- is that the wall shown by the heavy line in that picture in the lower right? A. Well, it's the walls of the vestibule, sort of like (107) the vestibule to the City Council Chamber.

Q. The wall on the left as you walk out, I take it. A. They were by both walls. Some of the group had their backs to each wall.

Q. Well, how many had their backs to that wall I referred to -- you said three? A. I think it could have been three, yeah.

3

Q. So maybe three had their backs to that wall? A. Yes.

Q. They were side by side? A. They could have been side by side or semi-facing.

Q. And where were the other three --

MR. FOX: I'll withdraw it.

Q. Did you observe five or six people? A. I observed a group of about six.

Q. There were three, then, that had their backs to the wall and were side by side. Where were the other three? A. They were semi-facing each other, not exactly side by side. They were hooked.

Gerald J. Guadagno for the State -- Cross

Q. How far away from the door was the man who was farthest from the door, how many feet? A. I didn't measure that there. I couldn't tell you exactly how far. It wasn't very far though.

Q. Was it more than five feet? A. No.

(108) Q. Was it more than four feet? A. No.

Q. Was it more than three feet? A. No.

Q. You mean the man farthest from the door was within two feet of it? A. The entrance to the council chambers?

Q. Yes. A. Yes.

Q. Was it more than one foot? A. I couldn't say for sure.

Q. So this whole group was within two feet of that door? A. Not the whole group, no.

Q. If the man farthest from the group was within two feet from it, where were the others -- they had to be closer, didn't they? A. The man farthest from it was a lot more than a foot away from there.

Q. Perhaps you misunderstood me, sir. The man farthest away was a foot? I thought you said within two feet. A. The man farthest was a lot more than two feet away.

Q. How many feet? A. I'd say about five feet away from the door.

(109) Q. Do you remember approximately what the width of the door was? A. The door?

Q. Yes, one door. A. I'd say it's like that door over there (indicating).

Q. You mean it's about that wide? Those are two doors over there, are they not? A. Yes.

Q. Is one door as wide as one of those doors, one of those two? A. I'd say it was just a little bit wider one door is, but not much more.

Q. That would be about three feet, wouldn't it? A. Just about that, yeah.

Q. The man who was farthest away, you say, was about five feet? A. Approximately that, yes.

Q. How about the man next to him, next closest, was he less than five feet? Would you say --

MR. FOX: I'll withdraw that.

Q. Would you say he was about four feet away? A. I'd say about four feet away.

Q. How about the others, were they any closer? A. Well, the closest one to it was about a foot away from the door.

(110) Q. Wouldn't you say if two people were more than three feet away, they didn't interfere with that door?

MR. PHELAN: I'll object, your Honor. He is asking for conclusions on behalf of the witness.

MR. FOX: I'll withdraw it, sir.

Q. Other than being seated and not moving, were these pe[illegible] in any way noisy or disorderly? A. No, I did[illegible] hear anything.

Louis Smith for Defendant-Appellants -- Direct

* * *

(130-1) LOUIS SMITH, one of the defendants, being duly sworn as a witness, takes the witness stand and testifies as follows:

Direct examination by Mr. Fox:

* * *

(132-9) Q. And where did you, yourself, sit when you arrived at the meeting hall? A. I believe I was the second row from the front because I put my signs right on the front seat, front row seat.

* * *

(132-23) Q. Were there other Core members in that section in the left? A. Scattered throughout.

(133) Q. In No. 1? A. No. 1 Section.

Q. About how many? A. Oh, boy! Six, seven, eight. I would say for sure eight, nine.

THE COURT: This is in Section 1, you are saying?

THE WITNESS: Yeah.

Q. Were there other people in that section other than Core members? A. Yes, there were.

Q. About how many others? A. Dean Good came in and sat there for a while, I think Mrs. McCrea was sitting there for a while. At least two more I can think of and there were people I didn't know at all.

* * *

(133-25) Q. Were there placards held by others than Core? (134) A. The NAACP had placards. When whoever the NAACP member was finished speaking they applauded, waved banners up and down in the air.

* * *

(135-1) Q. Describe what happened as far as the relationship between Mr. Good and others on the Council and audience. What happened as far as that goes when he spoke; do you remember? A. Except, yeah, there was general reaction each time Dean Good would get to a good point that seemed to please the audience.

Q. What was the reaction like? A. Like, you know, someone would say, "That's good," somebody else would say, "That's telling him; that's right." This type of thing was going on.

Q. Were there interruptions of any kind other than those? A. Nothing except us being interrupted from the conversation between Mr. Woodson and Mrs. Good.

* * *

(136-8) Q. What happened then? A. The fellow from Fitch Way was speaking and he was saying, "What's going to happen to me?" I remember Councilman Walsh told him he didn't know. The fellow said, "Even a dog, you know, has a place to live." Then therewas some admonishment of this person, and someone said, "Well, let the man talk." I remember hearing that.

* * *

(137-2) Q. Where was Mr. Callender seated? A. I didn't know that due when they came to get him he was seated all the way in the back on an end seat.

Q. How many rows away from you? A. The distance --

Louis Smith for Defendant-Appellants -- Direct

Q. More than seven or eight rows? A. Oh, yeah. He was catty-corner to me, too.

Q. Where were the other defendants? A. I think Mrs. Lewis was sitting beside me.

MR. PHELAN: Not what he thinks, your Honor. I think he should testify as to what he knows.

Q. To the best of your recollection. A. To the best of my recollection they were scattered throughout that section.

Q. Where were they in relation to Mr. Callender? A. I would say they were scattered between Mr. Callender and myself. If you consider me the left front and Mr. Callender the right rear of that section, then it was just sort of people spread all in between us.

* * *

(138-.5) Q. What did you do? (139) A. I walked outside and they had placed Herb against the wall.

Q. Which wall? A. If you were coming in it would be your right wall, if you were going out it would be your left wall. Over against the wall like that (illustrating). He was sitting there. Exactly what I said to him I don't remember, but I know he tried to get up. The officer came over and pushed him back down. He said, "You can't get up. Stay here."

Q. Then what did you do next? A. At which point I said, "Well, Herb, if they're going to take you to jail then I don't think you should go by yourself and I'm going to go with you. I'm going to stay with you." I sat down beside him and locked my arm. I didn't sit either. I stooped against the wall.

Q. Were you to his left then, is that right? A. If he's sitting here, I'm to his left, right.

Louis Smith for Defendant-Appellants -- Direct

Q. Where were the other defendants? A. Mr. Crittendon came and sat down beside me, which was to my left, and put his arm in mine and the three women sat directly in front of us. I remember because they had their legs down.

Q. You weren't in a semi-circle? A. No. I would like to draw exactly how we were. We have seen so many formations.

(140) Q. Would you do that.

MR. PHELAN: May we use a new sheet of paper, your Honor?

THE COURT: I think it would be better if you would, please. Can you release that?

A. We'll say this is the hallway and these are the doors to the chamber (drawing), the chamber being in here coming out. This door was closed back to here (indicating); this door was closed back to here (indicating). Herb sat right in here against the wall (indicating). The door was open at that time because if they'd have set Herb anywhere in here they couldn't move the door. They had him outside against the wall. I sat down beside him here with arms locked, very close together (indicating). Mr. Crittendon sat there and the three women sat in front of us like this (illustrating). Because I remember they had dresses and had their legs underneath them.

Q. Where was the door extended when open? A. Back to here (indicating). The width would take this arc (drawing). We were here (indicating). Herb was first.

Q. On that diagram where is the entrance to the chamber? A. Well, figure the door was stopped about here (indicating). The entrance is through this sideand through this side (141) (indicating).

Q. Were you ever in any other position than the ones you just described? A. No. It's very interesting because if your Honor wants to see I have spondylitis, rheumatoid arthritis of the spine, and I cannot sit down and put my legs out. It's a physical impossibility. In fact my doctor would be very happy if I could.

pretty good

* * *

(141-25) Q. Did they ask you to leave? (142) A. No The only thing they said, and that wasn't directly, they said, "Get those two first," and they started ripping Herb and myself, our arms, apart. I was the first one carried out, not on a stretcher. I was drug out. Even after we got to the police station I asked them, "Am I under arrest and what am I under arrest for?" I never found out until I came to your apartment before the first trial.

Q. Did you observe when the doors were closed, City Council doors? A. I know they were open at first because we were looking into Council. Who exactly closed them I don't know. I know they were eventually closed.

Q. Did anybody come out during the time they were open? A. Many people came out. There were some reporters that came out. In fact the Commissioner came out and he stood in the door actually, and someone asked him, "What are you going to do about this?" And he made the remark, "My hands are tied. I can't do anything." And he went back in and he came out several times. I remember Mrs. Lewis -- Dean Good came out and talked to the police. He told them. He said, "You're all making a mistake." Dean Good was walking in and out at the time. There were a lot of people in the hallway.

* * *

(146-8) Cross examination by Mr. Phelan:

* * *

(146-24) Q. You say Callender attempted to get up from the floor? (147) A. Right.

Q. He was seated at that time? A. He was seated against the wall.

Q. When he started to get up, you say one of the officers pushed him? A. Put his hands on his shoulders and said, "Stay there."

Q. Do you know which officer? A. No, I couldn't identify him either.

Q. You couldn't? A. No.

* * *

(152-8) HERBERT E. CALLENDER, one of the defendants, being duly sworn as a witness, takes the witness stand and testifies as follows:

Direct examination by Mr. Fox:

* * *

(155-4) Q. Were there placards in the audience? A. Yes, there were.

Q. Who had them? A. The NAACP had placards that they were holding in their hands. We had placards also, but they had been placed in empty seats, particularly in the front row of the -- the first row, the row before where Mr. Smith was sitting. I believe maybe other people in the area also were in the council chambers might have had placards.

Q. Will you describe the conduct of the audience and of the City Council during the time that the first two speakers were presenting their views? A. Well, there was, you know, a response to each one of the statements that were made. There was a pro and con on this thing. I believe the Planning and Development Director, Mr. Harvey Mandel, was presenting his side. There wasn't any particular response there, but most of the people that responded to the NAACP's statement and to the statement I believe of a minister, representative of ministerial group, there was applause and some cheering, you know, minimal but saying things, statements were made like, "That's what we want," you know, that kind of thing.

(156) Q. Who made those statements, the audience? A. Well, the audience, people throughout.

* * *

(156-17) Q. And then who spoke next? A. I believe it was after her, in between there -- I'm not sure whether Dean Good, the State President, spoke before her or after. I believe it was before. But then came Mr. Bradley, I believe his name was, who is a Fitch Way resident. Like myself he was not too articulate but certainly knowing what he wants. And he was able to get at least a portion of his statement out before he was interrupted repeatedly by the Council President.

(157) Q. What was the nature of these interruptions? A. "I don't understand what you mean," you know, with general smile on his face -- mocking smile, rather, on his face.

Q. Who said, "I don't understand what you mean," was that someone in the Council? A. No, this was the Council President, Walsh.

Q. Were there any other interruptions? A. He interrupted him again and asked him to speak up, and he was speaking quite clearly and loudly, you know, everyone was listening.

Q. Then what happened? A. And in between that time I heard someone state, "Let the man speak after the last interruption."

* * *

(158-13) Q. Did the meeting continue at this time? A. I don't know because I was placed on the outside of the council chambers in the spot indicated by Mr. Smith behind the door. The doors were open and I was placed on the well as you walk out on the left side and thrown up against the wall. I remember Mr. Smith coming out and I think he asked me a question was I hurt or anything like that, and I replied, "No," and I started to get up and I believe it was Officer Downing because he put his hand on me, pushed me back and said, "You sit there," which I did.

Q. You say you started to get up, what were you doing? A. I was sitting in the position they had thrown me up (159) against the wall in, you know, trying to recuperate a little bit.

Q. Were you trying to leave the room? A. It wasn't in the room. It was in the corridor and I would have gotten up and stood up and made a decision at that point. As it was there was no decision for me to make after I had been instructed by an officer to sit there.

Q. Did you ever move up -- Until the time you were removed from the hall by the police, did you ever move from the spot where you were originally placed by the two patrolmen? A. No, I hadn't. I stayed there.

Q. Would you show me where that spot is on that diagram. A. Certainly. Right here (indicating).

Q. Where is the door in relation to where you are pointing? A. The door is here (indicating). To the City Council Chambers there's a little anteroom or something in here (indicating), and then you go into council chambers.

Q. Was the door open then? A. The door was open when I first was sat up against the wall. At some point someone closed it. I don't remember who or when.

Q. Didyou at any time interfere with either the (160) closing of the door or anyone coming in or out of that room? A. No, I hadn't. There were a number of people that came in and out. The reporters came out just after I was told to sit there and remain there. Several of the reporters came over and they asked questions which, you know, they didn't get answers for except my name.

Q. Did you change your position on that floor? A. No. I know I stayed in this same position. There was really no change whatsoever outside of I might have put my foot down because it was up in a cramped position for a while and I might have rested it.

Q. Who was seated in front of you? A. Pardon me, sir?

Q. Who was seated in front of you? There are three circles in front of you, who were they? A. The three ladies sitting here -- Miss Marva Amis, Joyce Schurik and Mrs. Lewis.

Q. To your left? A. To my immediate left Mr. Smith.

Q. Next to him? A. Mr. David Critterdon.

* * *

(167-7) VERA McCREA, called as a witness by the Defendants, being duly sworn, takes the witness stand and testifies as follows:

Direct examination by Mr. Fox:

* * *

(168-3) Q. Is that the side opposite where the defendants were? A. Right.

Q. Did you observe where they were seated? A. Yeah. They were seated on this side of me, on the right far corner.

Q. Do you recall the speakers who spoke on this issue of the Fitch Way Project? A. Yes.

Q. What was the general conduct of the audience during their speach; do you recall that? A. Yes.

Q. All their speeches. Will you describe it? A. Yes. The NAACP they spoke first and, well, everybody else was speaking and when something went wrong, you know, the people in the audience would say, "Let him talk," or, you know, "He's right," you know, something like this.

Q. Would this be said in such a voice as to be able to be heard by everyone in the room? A. Yes, because I did myself.

* * *

(169-4) What did they say? A. Well, when Mr. Bradley was speaking and Mr. Walsh asked was somebody from John Fitch Way No. 3, Mr. Bradley raised his hand. Mr. Bradley got up and he spoke and he was telling Mr. Walsh, you know, he wanted to know what was going to happen to him and his mother and family when Urban Renewal came through. President Walsh told him he didn't know. He said, "Even a dog has to have some place to stay."

At that time President Walsh said something to him. I was the one said, "Let the man talk because he was from John Fitch Way No.3."

Q. You said that? A. I said it.

Q. Did the Council President warn you for saying anything like that? A. No, he didn't say anything to me.

Q. What happened after that? A. Well, NQACP chanted, "Freedom." They said, "Freedom," and they had their banners and held them up. I also had mine.

Q. Are any of these defendants in the NAACP? A. What defendants?

(170) Q. These six seated to my right and left. A. Not that I know of.

Q. Your knowledge this chant was by the NAACP? A. I'm sure it was.

* * *

Vera McCrea, for Defendant-Appellants -- Direct

(170-15) Q. Did you observe Mr. Callender when he was removed from the room by the policeman? A. Yes, I did.

Q. Did you see him removed into the hall? A. Yes.

Q. What did you do then? A. Well, I spoke right after that. I went to the mike and I spoke, and Mr. Good went out and he came back in and Mr. Hannon went over and talked to Mr. Good and Mr. Hannon came back and told me after I finished speaking they were locking them up. And I asked him for what.

(171) Q. Did you go out in the hall? A. Yes, I did.

Q. When was that? A. Right after Mr. Hannon told me what was happening.

Q. Had you finished your speech then? A. Yes, I had.

Q. How soon is that after the police had removed Mr. Callender? A. Oh, I don't know. I say maybe five minutes. It might have been less.

* * *

(172-24) Q. Would you indicate on that diagram where they were. (173) A. Yes, Herb was still sitting here and there was nobody here. I think he was sitting here and the girls were sitting here (indicating).

Q. This was when you went out the first time? A.Right.

Q. Did you have any trouble opening that door when you went out? A. No, I didn't.

Q. Did you have any trouble going back in? A. No -- Yes, I did. I had trouble going back in because I had to pass Officer Downing to do so.

Q. Were the doors closed at that time? A. The doors were closed.

Q. You had no trouble opening them and closing them? A. Not the first time I went out I didn't.

Q. Did anybody else have trouble? A. Yes. I met Mrs. Walsh, Betty Walsh. She came in and out of that door.

Q. Did she have trouble getting in and out? A. No.

Q. Did the meeting continue right after Mr. Callender was taken out? A. The meeting never stopped.

Q. So despite the incidents described, the meeting continued as it would normally? A. Right, because I spoke right after Mr. Bradley did and it never stopped.

* * *

(177-22) WILLIARD D. CRITTENDON, one of the defendants, being duly sworn as a witness, takes the witness stand and testifies as follows:

(178) Direct examination by Mr. Fox:

* * *

(180-2) Q. Did you have any plan before you went to that meeting to engage in a demonstration of any kind? A. No, sir.

Q. You went to the meeting just as an observer? A. Just as an observer to find out, you know, for ourselves and watch the Council in action and have the various pleas presented so we could get a clearer picture.

Q. Were you here to assist the local Core in any way? A. At this time, you know, it was just purely, you know, for a scene and hearing. I hadn't been assigned to it, if that's what you mean, no.

Q. Did you observe the speakers on the issue of the Fitch Way Project? A. Yes.

Q. Will you describe the nature of the talks that were given on this project and the participation, if any, by the Council and the public? A. Well, as has been stated previously, each person who wishes to speak has to come before the microphone and address the Council on the dais and speak to them. It was a pretty lively meeting. It was clear that there were dissenting opinions and there were opinions for, and it was kind of an electric meeting.

MR. PHELAN: I didn't hear that.
(181)THE COURT: Electric
THE WITNESS: Electric.
MR. PHELAN: Electric?
THE WITNESS: Electric, yes.

By Mr. Fox (continuing):

Q. When you say, "electric and lively," can you describe what you observed? A. I mean it wasn't dull. There was current flowing and wasn't something somebody just came to to be seen there. Some people were involved in what was being said.

Q. How could you tell that? A. Previously to this there was some discussion by Mr. Mandel of a park or recreation thing. I'm not sure. I wasn't particularly interested in this and the audience didn't seem to be.

Q. I'm sorry. What? A. The audience wasn't particularly interested in it either. There were a few people there interested, brought by some gentleman why he thought this land shouldn't be used for that park. I'm just drawing a comparison here.

Q. Then I take it the interest picked up. A. The interest did pick up, yeah.

Q. Was there applause, interruption; what was there? A. Well, there was reaction to speeches. When a person would say something, particularly against what the city (182) was proposing, there was scattered applause and very friendly ones, and acceptance of the man's comment.

Q. Were these audible throughout the whole hall? A. You could hear them. Some were inaudible, some could be heard.

Q. Did the Council participate in these discussions in any way? A. There were interruptions back and forth. There were several people who came and talked to the Council while other people were speaking to the microphone. I saw some of that. There was talk between members of the Council and they were summoning people to and from the council chambers. I mean it wasn't like it was an exodus, but there was movement going on in and around speeches. It seemed to be a very loose and fairly warm meeting.

Q. Do you remember the speaker who was on the stand at the time these incidents we have been hearing about today took place? A. You mean the residents from Fitch way?

Q. Yes. A. I remember him being there, yes.

Q. Can you describe what happened during his speech, what took place -- what did he say? A. I think Mr. Callender pretty much said it. He was imploring with the Council to see what he considered his (183) situation, to see it better than apparently he thought that they had been. He was telling them while they were saying such and such a thing was possible and plausible, in its benefit to him it was negligible.

Q. Did anyone interrupt him during his speech? A. He was interrupted from Council as to make points clear.

Q. Describe these interruptions. A. Say, "Repeat, repeat that. Could you make that more clear?" I think -- I guess it would be a conclusion on my part, but I think what they wanted was him to present himself in a more lucid manner than they thought he was doing. I thought he was perfectly clear.

* * *

Williard D. Crittendon, for Defendant-Appellants -- Direct

(185-16) Q. When you went out the door, did you observe the defendant, Herb Callender -- where was he? A. He was against the wall, away from the door.

Q. Was his position against the wall consistent with his position demonstrated on that diagram? A. Yes.

Q. He was placed down when the door were fully open? A. Yes.

Q. He was placed in such a spot he could not interfere with the opening and closing of the door, is that right? (186) A. No one would be hindered from entering or leaving.

Q. Could you describe the positions of the rest of you? A. The same as this diagram. Lou was beside Herb, I was beside Lou.

Q. About how many feet would you say you were from the entrance of the hall? A. It's hard to say. Seven or eight feet possibly.

Q. Did you or any of the girls in front of you have their feet in such a way as to block anyone who wished to come in and out of that passageway? A. No. I would not say that because, as has been said before about four or five times, when the girls sat down they had their skirts on and tucked their legs underneath them and had their backs to us. After we locked arms, we did, I'm not sure whether the girls did or not. They'd have to answer that themselves. In the pulling apart it's obvious people were all across the corridor.

Q. Did you notice anyone who had trouble getting in or out of that meeting room? A. Pardon? No, I didn't. I do remember Mr. Good coming out a couple times -- I remember him well -- and I remember the exchange with the Safety Director who somebody said was the Safety Director.

Q. Did you observe people who came out? (187) A. People with curiosity. I think there's some stairs lead off the entrance, people coming out of offices, coming in late to the meeting coming through.

Q. Did these people have any difficulty getting in and out? A. I don't believe so.

* * *

(187-9) Cross examination by Mr. Phelan:

* * *

(189-9) Q. Did anyone ask you to leave voluntarily? A. When I came outside the door I was standing watching. I don't know which officer it was. It may have been Officer McDonough. I'm not sure. He said, "Are you in or out?" And I just kind of looked at him. I didn't even answer him. I just kind of said to myself, "I guess I'm in." That was the last contact I had with the police officer speaking to me directly until we got to the Police Station. In the elevator going down, and I'm already wrapped up like this, a couple officers kind of smiling and saying, "It would have been a lot easier if you walked." I'm already there.

* * *

(191-9) JOYCE L. SCHURIK, one of the defendants, being duly sworn as a witness, takes the witness stand and testifies as follows:

Direct examination by Mr. Fox:

* * *

(191-19) Q. Do you remember where you were seated at that time? A. Yes, I do. I was sitting right here (indicating), across the way from Mr. Crittendon.

Q. Were the other defendants seated pretty much where those circles indicate they were seated? A. Yes, they were. We were lined up in this manner.

Q. I take it when they were there the doors -- when (192-1) they were first put there the doors were fully open? A. Yes, they were.

Q. They were later closed; the doors were closed. Did they in any way interfere with anyone coming in and out of that room? A. No.

Q. Did anyone you observed have any difficulty coming in and out of there as a result of where you and your friends were located? A. No. I saw Mr. Good walk in and out a few times without any difficulty.

* * *

(192-25) Cross examination by Mr. Phelan:

* * *

(198-10) Q. Where were you seated with respect to Callender?

* * *

(198-21)
A. I believe I was about four seats away from Mr. Callender.

* * *

(204-18)
MARVA L. AMIS, one of the defendants, being duly swown as a witness, takes the witness stand and testifies as follows:

Direct examination by Mr. Fox:

* * *

(207-8) Q. Was your position when you sat down outside identical with the position that has been previously described by the co-defendants? A. Yes.

Q. I take it that is the same as the position on the piece of paper over there. A. Precisely.

Q. You were then seated in front of one of the three men who had their backs to the wall? A. Yes I was.

Q. Which one of those circles was you -- were you first? A. I was sitting directly in front of Mr. Callender.

Q. That would mean you were closest to the door of all the women? A. That's right.

Q. Would where you were seated in any way interfere with opening and closing the door? (208) A. No, we did not.

Q. Did you at any time interfere with anyone who came in and out of that hall? A. No, I did not.

Q. Did anyone interfere with anyone coming in and out of that hall among the six defendants? A. No.

Q. Did you notice the Clerk of the Council when he left the hall? A. No, I didn't notice anyone in particular except Mr. Good because he was a little loud, and, you know, he was talking to the Director of Public Safety. But there were people in the meantime leaving and entering the chamber.

* * *

(208-23) Q. Did you understand these remarks were a threat on the part of Mr. Callender or anyone else to distupt the meeting? (209) A. No, I took it as no threat. Up until then the meeting had been, you know, rather noisy. There was a lot of talking and whispering because the subject was a controversial one. And, you know, there were applause and so forth.

Q. There was applause during the meeting? A. Yes, there were.

Q. When did this take place? A. Oh, I think right after the spokesman for the NAACP got through they sort of applauded and raised their signs and so forth.

Q. The NAACP applauded when people spoke from their group? A. Yes.

Q. Did they make any audible remarks other than applause from the floor? A. Audible, yes, but I couldn't discern what people were saying precisely.

Q. They did say things? A. Constant conversation throughout the hall.

Q. Did they direct remarks to the speakers? A. No, not in particular.

* * *

(210-8) Cross examination by Mr. Phelan:

* * *

(214-8) Q. Well,the act of sitting down? A. Mr. Callender had been placed in a position and he was not -- he was told not to move from it.

Q. Who told him that? A. And because of this--

Q. Who told him that? A. A police officer,

Q. What police officer? A. Officer Downing from what I gather.

Q. Did you hear him? A. I didn't hear officer Downing.

Q. Then you don't know if he was told. A. No. It was a police officer and he was the only one there so I imagine it was him.

Q. You didn't hear Officer Downing say a word to Mr. Callender, did you? A. No, I didn't.

Q. You didn't see Officer Downing do a thing to Mr. Callender, do anything to him in that corridor? A. Yes.

Q. What did he do? A. He stood over Mr. Callender and pushed him down.

Q. He pushed him down? A. Yes.

Q. And you witnessed that? A. Yes, I did.

Q. And who else was there when this occurred? A. All of us were there, I imagine.

* * *

(220-9)
JAMES A. MATTHEWS, called as a witness by the Defendants, being duly sworn, takes the witness stand and testifies as follows:

Direct examination by Mr. Fox:

* * *

(224-5) Q. What did they do after they left the chamber and entered the hall? A. Before the door was closed I noticed after the group had gone on the outside they were seated, the men were against the wall and the women were facing the men.

Q. Did they in any way interfere with anyone coming in and out of that chamber room? A. To the best of my knowledge I saw two or three persons go in and out of the room and with no interference whatsoever.

Q. Was there any interference with the opening and closing of the doors on the part of these defendants? A. No, not that I recall because the doors remained open for quite sometime until another officer closed the door, and I would say that was about anywhere from five to ten minutes.

Q. What did you do during all this time? A. Well, I yet remained on the inside of the Council room.

Q. Did you remain in there until the meeting was over? (225) A. Yes, sir.

Q. During the time --

MR. FOX: I'll withdraw that.

Q. At the time the President, Mr. Walsh, asked Mr. Callender be removed and shortly thereafter, was the meeting interrupted in any way? A. Well, to the best of my knowledge the only interruption I could see or would state would be only mementary during the time Mr. Callender was drug from the chamber room.

Q. Was that interruption any longer than the interruption that took place when Mr. Walsh asked the Council in general to be -- asked the audience in general to be less noisy? A. Well, I would say it could be equal because having your eye on this and noticing this and then this gentleman being drug out and the speaker speaking and watching the other people in the Council chamber, as far as the time element I couldn't exactly state, but to me it all would be equal.

* * *

(231-1) LILY R. LEWIS, one of the defendants, being duly sworn as a witness, takes the witness stand and testifies as follows:

Direct examination by Mr. Fox:

* * *

(235-2) Q. Will you describe the nature of the audience at that meeting? A. Well, it was more or less, well, each group -- I'm thinking because they had several groups there, but we had placards and signs which we placed in the front row of where we were sitting. The NAACP signs also were there. Now, when someone was talking and a point was pleasing say to the audience, well, they applauded or they said, "I'm for that," or something like this, "Good; you know that's telling them." This is what happened. So you were constantly more or less interrupted and there was, you know, applause after everyone's talk, especially against the project there was applause.

* * *

(235-18) Q. Do you remember the talk of the man who spoke immediately after you? A. Yes, I remember his attempts to talk.

Q. What was that like? A. Well, after the President of Council said so emphatically he wanted someone from the area, this gentleman came forth and identified himself and said, "I do live in the area." He said, "If you build homes for $20,000", he said, "I (236) spent $6,000." He said, "I'm the only breadwinner," or something like this, "in my family and this is the only place I know. He said, "I'd like to be able to move back here."

So Walsh said something like, "It's going to take three years or something for the homes to go up so you'll just have to find some place to go". He said -- at least he was attempting to say, "A dog wants to belong some place. "He has to have a home."

Q. Do you remember the reaction, if any, from the audience at the time of this talk? A. Well, I was for one startled because I thought here was a man from the area who was trying to say what he really wanted and I didn't think he was being allowed to say it.

Q. Do you remember the remarks that were made by Mr. Callender from the audience? A. Well, I remembered when the poor man, you know, however uneducated he might have been I think he was putting his point across well and he was trying to talk and I was interrupted and here this poor man was interrupted, too. And someone said, you know, "Let the man talk."

Q. Do you remember who said it. A. I don't remember who said it, no.

Q. What part of the audience did that remark come from? (237) A. The exact section I don't remember because they said it before. I probably would have said it next.

Q. Was it in the section of the audience in which you were seated.? A. I don't believe it was.

Q. What was the comment from the Council after that statement was made? A. Well, when this statement came the Council President seemed to become, you know, very upset because, you know, he was getting a reaction from the audience to this man being denied his rights.

Q. Did he say anything? A. He said, "One more outburst like that and I'm going to have you removed from the chambers," or something like this.

Q. Do you remember Herb Callender's remark to the effect, "We haven't done anything yet."? A. I remember him saying it, yes.

Q. Did that indicate to you a threat, demonstration or some other action would be taken by him or anyone else? A. No, no id did not.

Q. Was that remark on his part any louder than the other remarks you heard from the audience? A. No, it was not.

* * *

(247-8) ROBERT DOWNING, previously sworn as a witness, resumes the witness stand as a rebuttal witness called by the State, ans testifies as follows:

Direct examination by Mr. Phelan:

* * *

(248-5) Q. Now, after Callender was removed to the corridor, you say he was placed against the wall, I believe you say his knees were pulled up toward his chest at first. A. That's correct.

Q. And later he extended his feet so they extended out into the corridor? A. That's correct, sir.

Q. And at any time did Mr. Callender make an attempt to get up? A. Not to my knowledge, sir.

Q. At any time, sir, did you restrain Mr. Callender from arising? A. No, I did not.

Q. With respect to the other defendants, Officer, namely Williard D. Crittendon, did you have occasion to speak to him in the corridor? A. Like I stated, I spoke to all of them as a group. At first I spoke to the group telling them that no charges has been placed against them, they were free to leave, and they just looked, stared.

* * *

Robert Downing, for the State -- Rebuttal --Cross
James J. McDonough, for the State -- Rebuttal --Direct

(250-1) Cross examination by Mr. Fox:

Q. Officer, no one in that chamber or in the hall at any time complained to you that he wanted to get out and couldn't get out, did he? A. No one complained to me about that.

Q. You say you told all these defendants they were free to leave? A. I spoke to the five of them and the five of them offered no comment.

Q. Which five did you speak to, all except Mr. Callender, is that it? A. Yes, sir.

Q. When did you speak to them? A. Well, it was almost immediately after we arrived in the hallway because they were right behind us, and they stood there and so we told them that they were free to go. They wanted to know what was going on.

Q. Did you tell them after that time, at any time, they were still free to leave? A. After which time -- after we told them once?

Q. After you saw them in the corridor at the time you just described. A. Did we tell them again?

Q. Did you tell them? A. I didn't tell them again, no.

* * *

(251-22) JAMES J. McDONOUGH, previously sworn as a witness, resumes the witness stand as a rebuttal witness called by the state, and testifies as follows:

Direct examination by Mr. Phelan:

Q. * * * (252-8) During your participation in this incident did you have occation to speak to any of the defendants with respect to their ability to leave? A. Yes, sir, I did. I spoke to the three ladies, to Mr. Smith and Mr. Crittendon not once but three times, and they were told three times that they were free to go if they wanted to walk out of the municipal building, which they refused to do.

Q. Did they reply either affirmatively or negatively? A. No reply at all.

Q. No reply whatsoever. Officer -- sorry, correction. Sergeant, during the time that you were in the corridor and Mr. Callender was seated on the floor, do you recall whether or not he made any attempts to rise to his feet? A. No, sir, he did not.

Q. At any time did you observe Officer Downing restrain Callender from getting to his feet? A. No, I did not.

* * *

(253-14) Cross examination by Mr. Fox:

* * *

(254-3) Q. You didn't know, then, whether at that time Mr. Callender tried to leave, do you? A. No, sir, I do not.

Q. Was it noisy in the hall? A. There was conversation. I wouldn't call it noise.

Q. Did anyone at any time complain to you he wanted to get out of that hall and couldn't? A. I don't know that there was anyone wanting to go inside council chambers at that time.

COLLOQUY -- THE COURT

Q. No one did complain to you then. A. No, sir.

MR FOX: That's all, sir.

MR. PHELAN: Thank you, sir.

THE COURT: One question I have.

MR.PHELAN: Excuse me.

THE COURT: Did you ask Mr. Callender to leave the hall?

THE WITNESS: No, sir, we did not. Mr. Callender had been placed under arrest and we carried him from the council chambers.

* * *

(269-4) THE COURT: Well, I have already indicated there are six separate complaints and I read the six separate names of the defendants. They are charged under two counts, the first count being -- andall of the counts are word for word the same as to each defendant -- the first count they did by noisy and disorderly conduct, disturb and interfere with the quiet and good order of the City Council meeting, which is contrary to Section 28 of 2A:170.

As everyone who is here understands, I dismissed the complaint regarding the three members of the distaff side here and Mr. Smith insofar as that charge is concerned for lack of evidence.

I have no question in my mind and, of

course, the test in a case of this kind even though it is quasi-criminal, you must establish -- the State has to establish every point beyond a reasonable (270) doubt. There is no question in my mind this was established regarding Mr. Callender by his actions inside the Chamber after he was asked to leave certainly by President Walsh and I believe, as a matter of fact, by Officer Downing. On that particular charge regarding Mr. Callender, I am going to impose a fine of $100.00.

after he was asked to leave

As far as Mr. Crittendon, I still feel something certainly occurred between Mr. Crittendon and Mr. Callender inside the hall. He was seated, I believe, either next to him or I think two seats away. The testimony isn't clear to me when the officers went back, the two officers went back the second time, the officer and Seargeant McNonough went back, there was no testimony that he didn't let go if he did have hold of him.

I don't feel beyond a reasonable doubt in my mind has been proved against Section 28. So I'll dismiss it as to him after hearing the defense counsel's case.

As to the second count which is a (271) violation of Statute 2A: 170-29, the specific section being 2b, states that any person who in any place, public or private, obstructs, molests or interferes with any person lawfully therein is a disorderly person and therefore subject to the fines as stated in 2A;169-4.

COLLOQUY -- THE COURT

I have no difficulty with this particular case. I think everyone including the defendants, except they did violate the law, think it wasn't a great deal of an uproar because of perhaps the way the police handled it and the way the defendants reacted to the way the police handled it.

I can understand concern of the City Hall, not necessarily entirely what these people themselves do in a situation such as this but, of course, the law is concerned with what other people in the chamber are going to do as a result of what they do, which is the big concern, I think.

In my opinion beyond any reasonable doubt it has been established they certainly obstructed and interfered as I understand the word, "obstruct." It isn't necessary they block the door as I understand it, but to sit in the hall just outside the door certainly in my way of thinking is obstruction. The word, "obstruct," means to hinder not absolutely block out.

As far as interference, there certainly was an interference. It wasn't a great interference, as far as I can gather from hearing all the testimony.

I am going to find each one of them guilty. As far as the fine on this particular count, I don't think the other count, I don't think the other Court was

COLLOQUY -- THE COURT

Completely out of line. I don't see any reason, from what I have heard, that Mr. Smith and Mr. Callender should be fined more than the others. I am going to fine each one of them $100.00 as to each defendant on the second count, and $100.00 against Mr. Callender on the first count.

* * *

MUNICIPAL COURT OF THE CITY OF TRENTON

State of New Jersey)
)
vs.)
)
LOUIS S. SMITH)
)
Defendant)

COMPLAINT
DISORDERLY PERSONS ACT

STATE OF NEW JERSEY)
COUNTY OF MERCER) ss.

On this Nov. 6, 1964, personally appeared before me, the Municipal Magistrate of the City of Trenton, Ptl. Robert Downing who, upon his oath, complains that at the City of Trenton aforesaid, on Nov. 5, 1964 at City Hall, LOUIS S. SMITH did violate the provisions of An Act of the Legislature of the State of New Jersey entitled "Disorderly Persons, "N.J.S. 2A, Chapter 170, in that the defendant

did by noisy and disorderly conduct disturb and interfere with the quiet and good order of the City Council meeting.
Sec. 28
Second Count:
At the aforesaid time and place, LOUIS S. SMITH did obstruct and interfere with persons lawfully therein.
Sec. 29 (2-b)

against the peace of the State; he therefore prays that the said defendant may be apprehended and held to answer this complaint, and be further dealt with as the law directs.

Sworn and subscribed to
before me the day and
year first above written

____
Complainant

____
Magistrate-Clerk, Municipal Court of Trenton

MUNICIPAL COURT OF THE CITY OF TRENTON

State of New Jersey)
)
vs.) COMPLAINT
HERBERT E. CALLENDER) DISORDERLY PERSONS ACT
)
Defendant)

STATE OF NEW JERSEY)
COUNTY OF MERCER) ss.

On this Nov. 6, 1965, personally appeared before me, the Municipal Magistrate of the City of Trenton, Ptl. Robert Downing who, upon his oath, complains that at the City of Trenton aforesaid, on Nov. 5, 1964 at City Hall, HERBERT E. CALLENDER did violate the provisions of An Act of the Legislature of the State of New Jersey entitled "Disorderly Persons," N.J.S. 2A, Chapter 170, in that the defendant did by noisy and disorderly conduct disturb and interfere with the quiet and good order of the City Council meeting. Sec. 28

Second Count:
At the aforesaid time and place, HERBERT E. CALLENDER did obstruct and interfere with persons lawfully therein. Sec. 29 (2-b)

against the peace of the State; he therefore prays that the said defendant may be apprehended and held to answer this complaint, and be further dealt with as the law directs.

Sworn and subscribed to
before me the day and
year first above written

Complainant

Magistrate-Clerk, Municipal Court of Trenton

MUNICIPAL COURT OF THE CITY OF TRENTON

State of New Jersey)
)
vs.)
)
MARVA L. AMIS)
)
Defendant)

COMPLAINT
DISORDERLY PERSONS ACT

STATE OF NEW JERSEY) ss.
COUNTY OF MERCER)

On this Nov. 6, 1964, personally appeared before me, the Municipal Magistrate of the City of Trenton, Ptl. Robert Downing who, upon his oath, complains that at the City of Trenton aforesaid, on Nov. 5, 1964 at City Hall, MARVA L. AMIS did violate the provisions of An Act of the Legislature of the State of New Jersey entitled "Disorderly Persons," N.J.S. 2A, Chapter 170, in that the defendant did by noisy and disorderly conduct disturb and interfere with the quiet and good order of the City Council meeting. Sec. 28

Second Count:
At the aforesaid time and place, MARVA L. AMIS did obstruct and interfere with persons lawfully therein. Sec. 29 (2-b)

against the peace of the State; he therefore prays that the said defendant may be apprehended and held to answer this complaint, and be further dealt with as the law directs.

Sworn and subscribed to
before me the day and
year first above written

____
Complainant

____
Magistrate-Clerk, Unicipal Court of Trenton

MUNICIPAL COURT OF THE CITY OF TRENTON

State of New Jersey)
)
vs.)
)
LILY R. LEWIS)
)
Defendant)

COMPLAINT
DISORDERLY PERSONS ACT

STATE OF NEW JERSEY) ss.
COUNTY OF MERCER)

On this Nov. 6, 1964, personally appeared before me, the Municipal Magistrate of the City of Trenton, Ptl. Robert Downing who, upon his oath, complains that at the City of Trenton aforesaid, on Nov. 5, 1964 at City Hall, LILY R. LEWIS did violate the provisions of An Act of the Legislature of the State of New Jersey entitled "Disorderly Persons," N.J.S. 2A, Chapter 170, in that the defendant did by noisy and disorderly conduct disturb and interfere with the quiet and good order of the City Council meeting. Sec. 28

Second Count:
At the aforesaid time and place, LILY R. LEWIS did obstruct and interfere with persons lawfully therein. Sec. 29 (2-b)

against the peace of the State; he therefore prays that the said defendant may be apprehended and held to answer this complaint, and be further dealt with as the law directs.

Sworn and subscribed to
before me the day and
year first above written

Complainant

Magistrate-Clerk, Municipal Court of Trenton

MUNICIPAL COURT OF THE CITY OF TRENTON

State of New Jersey)
)
vs.) COMPLAINT
) DISORDERLY PERSONS ACT
WILLIARD D. CRITTENDON)
)
Defendant)

STATE OF NEW JERSEY)
COUNTY OF MERCER) ss.

On this Nov. 6, 1964, personally appeared before me, the Municipal Magistrate of the City of Trenton, Ptl. Robert Downing who, upon his oath, complains that at the City of Trenton aforesaid, on Nov. 5, 1964 at City Hall, WILLIARD D. CRITTENDON did violate the provisions of An Act of the Legislature of the State of New Jersey entitled "Disorderly Persons," N.J.S. 2A, Chapter 170, in that the defendant

did by noisy and disorderly conduct disturb and interfere with the quiet and good order of the City Council meeting. Sec. 28
Second Count:
At the aforesaid time and place, WILLIARD D. CRITTENDON did obstruct and interfere with persons lawfully therein.
Sec. 29 (2-b)

against the peace of the State; he therefore prays that the said defendant may be apprehended and held to answer this complaint, and be further dealt with as the law directs.

Sworn and subscribed to
before me the day and
year first above written

____
Complainant

____
Magistrate-Clerk, Municipal Court of Trenton

MUNICIPAL COURT OF THE CITY OF TRENTON

State of New Jersey vs. JOYCE L. SCHURIK Defendant	COMPLAINT DISORDERLY PERSONS ACT

STATE OF NEW JERSEY)
COUNTY OF MERCER) ss.

On this Nov. 6, 1964, personally appeared before me, the Municipal Magistrate of the City of Trenton, Ptl. Robert Downing who, upon his oath, complains that at the City of Trenton aforesaid, on Nov. 5, 1964 at City Hall, JOYCE L. SCHURIK did violate the provisions of An Act of the Legislature of the State of New Jersey entitled "Disorderly Persons," N.J.S. 2A, Chapter 170, in that the defendant did by noisy and disorderly conduct disturb and interfere with the quiet and good order of the City Council meeting. Sec. 28

Second Count:
At the aforesaid time and place, JOYCE L. SCHURIK did obstruct and interfere with persons lawfully therein. Sec. 29 (2-b)

against the peace of the State; he therefore prays that the said defendant may be apprehended and held to answer this complaint, and be further dealt with as the law directs.

Sworn and subscribed to
before me the day and
year first above written

Complainant

Magistrate-Clerk, Municipal Court of Trenton

SUPERIOR COURT OF NEW JERSEY

Appellate Division

Docket No. A-753-54

THE STATE OF NEW JERSEY vs. LOUIS S. SMITH, HERBERT E. CALLENDER, MARVA L. AMIS, LILY R. LEWIS, WILLIARD D. CRITTENDON, JOYCE L. SCHURIK, Defendant-Appellants.	QUASI CRIMINAL ACTION (Under the Disorderly Persons Act) on Appeal from a Judgment of Guilty from the Essex County Court - Law Division Sat Below: Noden, J.C.C.

REPLY BRIEF FOR APPELLANTS

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SUMMARY OF ARGUMENT

POINT I

DEFENDANT CALENDER COMMITTED NO ACT VIOLATIVE OF NJSA CHAP 2A: 170-28

A) RESPONDENTS MISCONCEIVE THE BASIS OF CALLENDER'S CONVICTION WHICH COULD NOT HAVE BEEN BASED ON HIS WORDS AT THE MEETING.

B) EVEN IF CALLENDER'S VOCAL PROTEST WAS THE BASIS OF HIS CONVICTION SUCH CONDUCT IS NOT PUNISHABLE UNDER § 170-28.

POINT II

THE TESTIMONY CITED BY RESPONDENTS DOES NOT SUPPORT THE CONCLUSION THAT THE PASSAGE OR ANYONE IN IT WAS OBSTRUCTED BY THE DEFENDANTS.

POINT III

FAR GREATER OBSTRUCTION, NOISE, DISRUPTION AND THREAT OF VIOLENCE WERE COUNTENANCED IN THE " CIVIL RIGHTS" CASES OF THE SUPREME COURT THAN WAS CONCEIVABLE HERE.

POINT I

DEFENDANT CALLENDER COMMITTED NO ACT VIOLATIVE OF NJSA CHAP 2A: 170-28

A) RESPONDENTS MISCONCEIVE THE BASIS OF CALLENDER'S CONVICTION WHICH COULD NOT HAVE BEEN BASED ON HIS WORDS AT THE MEETING.

In deciding that defendant Callender was guilty of disturbing the Council meeting, the Court below said:

> "There is no question in my mind this was established regarding Mr. Callender by his actions inside the Chamber *after* he was asked to leave certainly by President Walsh and I believe, as a matter of fact, by Officer Downing."(Emphasis supplied) (63a - 10-15).

By placing reliance on Callender's "acts" *after* the wrongful order to eject was made, the Court rightfully found that the particular words uttered by Callender did not constitute a basis on which he could be held criminally accountable. Yet Respondent totally disregards the *ratio decidendi* of the court below and instead bases its arguments primarily on the testimony of Council President Walsh:

this
question of
meeting

> "And as an immediate reply or retort to that statement I was looking over at Mr. Callender, and Mr. Callender said "*We have not begun to interrupt your meeting yet*," which I took to be a challenge, a threat, in addition to being a disturbance that more was to come." (R9-27 to R9-33) (Emphasis added by Respondent)

It is noteworthy that the President's personal "concusions" regarding the impact of Callender's words were totally improper and inadmissible, and as such

This is further illustrated in Appellant's Brief (Point I (A).

In responding to Appellant's brief, the State makes no effort to deal seriously with the statutory arguments set forth. It is a consistently applied principle, however, that a Court will not reach "constitutional" questions where arguments based on the interpretation of the statute would be dispositive. Poe v. Ullman, 367, US 497,503, 81 SCt 1752, 1756 (1961).

POINT II

THE TESTIMONY CITED BY RESPONDENTS DOES NOT SUPPORT THE CONCLUSION THAT THE PASSAGE OR ANYONE IN IT WAS OBSTRUCTED BY THE DEFENDANTS.

Respondent states (at R.10) that:

> "The defendants had positioned themselves in such a manner as to constitute a complate obstruction to the free and orderly ingress and egress of pedestrian traffic to the Council chambers."(R. 10-33-39)

Support for this declaration is sought in the testimony of Patrolman Downing, Sergeant McDonough and Sergeant McKeever (cited at R. 10, 11, & 12); But all that their testimony supports is the fact that the defendants, or some of them, were sitting with interlinked arms and legs. Indeed the County Court, contrary to the Respondent, found that no such obstruction existed:

> "It isn't necessary they block the door as I understand it, but to sit in the hall just outside the door certainly in my way of thinking is obstruction...
>
> As far as interference, there certainly was an interference. It wasn't a great interference as far as I can gather from hearing all the testimony." (64a-25-36.)

That at most a mere inconveniencing of one person (Mr. Maziarz) was all that was indicated is throughly brought out by the findings of Judge Noden. That a mere inconveniencing is not enough to justify a conviction under a statute such as § 170-29(2)(b) is amply indicated by Point II (particularly Point II (b) (1) & (2) of Appellant's brief, the validity of which Respondent does not even attempt to dispute. Only in the unlikely event that these statutory grounds are not dispositive need the court reach the "constitutional" issues raised. If, as Appellants have argued, § 170-29-(2)(b) is inapplicable to the conduct involved, no question as to the constitutionality of the statute arises.

POINT III

FAR GREATER OBSTRUCTION, NOISE, DISRUPTION AND THREAT OF VIOLENCE WERE COUNTENANCED IN THE "CIVIL RIGHTS" DECISIONS OF THE SUPREME COURT THAN WAS CONCEIVABLE HERE.

Only in the event that the statutes (§§ 170-28 and 29 (2)(b)) are deemed applicable to the peaceful conduct of appellants does the question of their constitutionality arise.

With that in mind, it must be noted, that far broader conduct has been held by the United States Supreme Court to be constitutionally protected than could conceivably have been evidenced in the present case.

The demonstrators in Edwards v. South Carolina 372 US 229, 83 S.Ct. 680 (1963), (which Respondent seeks to distinguish) were, like the defendants here, non-violent, and unobstructive, but unlike the present defendants they engaged in "boisterous, loud and flamboyant conduct," Edwards v. South Carolina , supra at 233.

In *Fields* v. *South Carolina* , 372 US 522, 83, S. Ct. 887 (1963), the *per curiam* decision of the Supreme Court accepted the facts as set out by the South Carolina court, In the opinion below (240 SC 366, 126 S.E. 2d.6 (1962)), the court found that 349 arrested demonstrators were part of a group totalling nearly 1,000.

The demonstrators not only blocked sidewalks but also vehicular traffic. They neither sought nor intended to seek an audience with city officials. Furthermore violence had occurred and "very high tension" existed. *Fields* v. *South Carolina*, supra, 126 S.E. 2d at 4.

In *Henry* v. *City of Rock Hill*, 375 US 6 84 S Ct. 44 (1963) the Supreme Court again accepted the facts as found by the South Carolina courts. On remand "in light of" the *Edwards* case, the South Carolina Supreme Court reaffirmed the convictions because the demonstrations were surrounded by high tensions, bombing threats, blocked traffic, and loud noise, and also because the demonstrators refused to disperse after 25 minutes notice. The noise created by the demonstrators was so great that work inside the City Hall was completely disrupted./1 *Henry* v. *City of Rock Hill*, 135 S.E. 2d 718. This time the United States Supreme Court reversed in a *per curiam* opinion in which it reiterated much of the language in the *Edwards* case. *Henry* v. *City of Rock Hill*, 376, U.S. 786, 84 S.Ct. 1042, (1964). See also *Cox*. V. *Louisiana* , US 85 S.Ct. 453 (1965), which Respondent cites at R5-26, but, which he does not seek to analyze.

/1 Respondent's statement (at R7-28 - R8-8) of the "facts" in the *Henry* case are totally incorrect.

If the above cases are distinguishable factually, from the present case, it is on the basis that far broader conduct was protected than was hinted at by the truly "peaceful expression of unpopular views" in the present case.

CONCLUSION

Wherefore, it is respectfully submitted that the judgment of the Hon. J. Wilson Noden, Judge of the Mercer County Court, Law Division-Criminal, convicting Herbert E. Callender of violating NJSA (1952) Chap. 2A: 170-28 and Louis S. Smith, Herbert E. Callender, Marva L. Amis, Lily R. Lewis, Willard D. Crittenden, and Joyce L. Schurik, of violating NJSA (1952) Chap. 2A:170-29 (2) (b) be reversed.

Respectfully submitted,

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by David I. Fox
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Stephen M. Nagler,
Carl Rachlin,
George Schiffer,
of Counsel.

SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

DOCKET NO. A-753-64

THE STATE OF NEW JERSEY,

-vs-

LOUIS S. SMITH, HERBERT
E. CALLENDER, MARVA L.
AMIS, LILY R. LEWIS,
WILLARD D. CRITTENDON,
JOYCE L. SCHURIC,

Defendant-Appellants.

QUASI-CRIMINAL ACTION
(Under the Disorderly
Persons Act) On Appeal
from a Judgment of the
Mercer County Court, Law
Division.

Sat below: Noden, J. Wilson
Juvenile & Domestic
Relations Court, Assigned.

BRIEF FOR RESPONDENT STATE OF NEW JERSEY

VINCENT PANARO
Mercer County Prosecutor

By: EDWARD J. PHELAN
Assistant Prosecutor

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QUESTIONS INVOLVED

ARE THE RIGHTS OF AN INDIVIDUAL WHICH ARE GUARANTEED UNDER THE FIRST AMENDMENT TO THE FEDERAL CONSTITUTION AS IMPLEMENTED BY THE FOURTEENTH AMENDMENT ABSOLUTE AND WITHOUT LIMITATION?

10

IS N.J.S. 2A:170-29 (2) (b) INVALID BECAUSE IT VIOLATES THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE FEDERAL CONSTITUTION IN THAT ITS TERMS ARE VAGUE?

STATEMENT OF FACTS

The Statement of Facts, together with the transcript of the testimony, complaints, and subsequent pleadings as contained in the Appellants Brief and Appendix are agreed upon by the State.

ARGUMENT

POINT I

ARE THE RIGHTS OF AN INDIVIDUAL WHICH ARE GUARANTEED UNDER THE FIRST AMENDMENT TO THE FEDERAL CONSTITUTION AS IMPLEMENTED BY THE FOURTEENTH AMENDMENT ABSOLUTE AND WITHOUT LIMITATION?

In the matter presently pending before this appellate tribunal, defendant-appellants seek a reversal of their conviction before the Mercer County Court after trial de novo, no stenographic record having been taken before the Municipal Court of the City of Trenton. They seek reversal on the grounds that as a matter of law the evidence was insufficient to warrant conviction. It is stipulated and agreed upon that the incidents which were the basis for the filing of the disorderly complaints developed during the course of a formal meeting of the governing body of the City of Trenton on November 5, 1964.

Defendant-Appellants first argue that the particular statute, namely N.J.S.A. 2A:170-28 is unconstitutional in that it is vague because it fails to adequately define the conduct to which it is directed or to the places to be protected.

2A:170-28 reads as follows:

DISTURBING ASSEMBLIES

"Any person who by noisy or disorderly conduct

> disturbs or interferes with the quiet
> or good order of any place of assembly
> public or private, including schools,
> churches, libraries and reading rooms,
> is a disorderly person."

The term "assembly" is defined as a gathering of persons as for deliberation, legislation, or worship. Websters New International Dictionary (2 ed. 1948)

Defendant-Appellants urge that inasmuch as the legislature of New Jersey has seen fit to include and specify in the particular statute involved places as schools, churches, libraries, it necessarily excludes such assemblies as public governing bodies from its protection. An analogy is offered as to the conduct expected of an individual in attendance at a baseball game and the conduct expected of the same individual who seeks to utilize the facilities of a library. The State recognizes and is in complete agreement that the standard of deportment would differ, however, it is suggested that one can be guilty of disorderly conduct while at a baseball game.

The true question is to what extent an individual or group of individuals can go in furtherance of their rights under the First Amendment to the Constitution as implemented by the Fourteenth Amendment while in attendance at a public meeting of a governing body, be it national, state, county or local. If this right of expression is absolute and without qualification then necessarily the convictions must be reversed; if qualified, were their actions such from the evidence presented sufficient to warrant conviction.

Defendant-Appellants place great emphasis upon a series of decisions eminating from the Supreme Court of the United States in decisions classified as "civil right cases.", namely: Garner v Louisiana, 368 U.S. 167, 82 S. Ct. 248 (1951); Edwards v South Carolina, 372 U.S. 229, 83 S. Ct. 680 (1962); Henry v City of Rock Hill, 376 U.S. 776, 84 S. Ct. 1042 (1964); Field v South Carolina, 375 U.S. 44, 84 S. Ct. 149 (1964); Cox v Louisiana, U.S. , 85 S. Ct. 453 (1965).

Garner v Louisiana, supra, the Supreme Court in three consolidated cases, based their reversal of state criminal convictions for breach of peace on the relatively unexplored grounds of inconsistency with the Fourteenth Amendment to our Federal Constitional requirements because of an absence of evidence of the defendants guilt. The petitioners were a group of negroes who had been arrested while sitting at segregated lunch counters in stores, namely: Garner v Louisiana, drug-store; Briscoe v Louisiana, bus terminal; and, Houston v Louisiana, department store lunch counter, otherwise opened to all customers; their only reluctant actions were their refusal to leave the counters at the request of police officers. Their convictions under a general disturbing the peace statute were affirmed by the Louisiana Supreme Court in an unreported two sentence opinion which asserted that the court lacked jurisdiction to review facts in a criminal case and that the lower court was correct in its ruling of law.

On certiorari, the United States Supreme Court held that the conviction deprived the petitioners of their liberty without due process of law. Chief Justice Warren, writing for the majority, concluded upon examination of the Louisiana precedent, that the statute required proof of conduct at least "likely to cause a public disturbance." He found the record devoid of evidence of outwardly violent acts or of conduct that might lead to disorder.

In the review of cases where the decisions of state courts are drawn in question, involving the First Amendment, the Supreme Court will make an examination of the evidence to make an independent assertion as to whether or not the constitutional right of the accused has been violated. Feiner v People of the State of New York, 340 U.S. 315, 71 S. Ct. 303, 95 L. Ed. 267. The Feiner case arose out of a situation in the City of Syracuse, New York. O. John Rogge, a former assistant attorney general of the United States was scheduled to make a speech at one of the local public auditoriums when his permit was cancelled. One of his followers, while in the process of making a street corner address to a group of approximately 80 to 90 people both colored and white, made references such as: "Truman was a bum", "O'Dwyer was a bum" and that "members of the American Legion were nothing but an organization of Nazi Gestapoes." Feiner's conviction was upheld in that there was no abuse of discretion on behalf of the police department.

In Henry v City of Rock Hill, supra., the petitioners were convicted of a breach of the peace in the General Sessions Court of York County, South Carolina and their conviction was ultimately affirmed by the Supreme Court of South Carolina. The petitioners had assembled in a peaceful and orderly fashion in front of the City Hall to protest segregation, they were at a place where state law did not forbid them to be, they were engaged in a peaceful expression of unpopular views and ultimately arrested for failure to disperse upon orders when where was no violence or threat of violence and traffic was not disturbed.

The United States Supreme Court reversed the convictions holding that Edward and Fields, supra controlled. Edward established that the "Fourteenth Amendment does not permit a State to make criminal the peaceful expression of unpopular views." As in Edwards, the South Carolina Supreme Court defined "a criminal offense so as to permit a conviction of petitioners, if the speech stirred people to anger, invited public dispute or brought about a condition of unrest." A conviction on any of those grounds may not stand.

Henry, Fields and Edwards, supra are distinguishable.

In the instant case, the matter complained of by the State took place within and adjacent to the public hearing room during the course of the official deliberations of the city council. The testimony of the President of the Council was as follows:

> ********We had, I believe it was on this resolution, it had come up a month before and at the request of one of my colleagues we postponed it for one month because he indicated to us that certain

> aspects of the relocation proposal were challenged by some individuals or organizations in the community without identifying them. And he asked a month be given, delay, for purposes of these objectors to submit their objections in writing. So far as I know they were never submitted. As I say, about a half hour after the meeting started, perhaps a little more, I noticed to my left, my far left, mumblings, noise, a distraction which I think was caused by conversation which wasn't discernible to me. I rapped the gavel and asked for order and then somewhat later, a few minutes later, from the same area there was another expression which I heard, but once again I did not hear the particular verbiage. And I looked down in the area where Mr. Callender was sitting and I admonished the individuals in the council chamber and particularly those to my far left, that we had to have order in order to conduct a public meeting.
>
> By Mr. Phelan (continuing)
>
> Q. Was it interfering with the meeting?
>
> A. Yes, sir, it had been. And I admonished the people in attendance that if there were not silence we would have to ask them to leave or ask them to be removed by the sergeant-at-arms. And as an immediate reply or retort to that statement I was looking over at Mr. Callender, and Mr. Callender said "We have not begun to interrupt your meeting yet," which I took to be a challenge, a threat, in addition to being a disturbance that more was to come. ********" (12a-15 to 12a-44) (Emphasis added)

Likewise, the testimony of Stanley H. Maziarz, Clerk of the City of Trenton was as follows:

> Q. Who is Odell Bradley?
>
> A. Odell Bradley was a resident from Lamberton Street and responded to a comment by the President,

> President Walsh of Council, as to whether any residents of the John Fitch Way Area wished to testify on the piece of legislation that was before City Council --
> Q. Yes sir. A. --- and as Odell Bradley began to speak, Mrs. Lewis, who had been at the microphone, had just returned to the far end of the council chambers where four or five other persons were seated, and it appeared that some conversation, not audible to the podium but loud enough to distract the President who was then presiding, the Council and the people in the Chamber, in fact Odell Bradley who was speaking had taken place before or among this four or five people. At that moment, President Walsh stated that quiet will have to prevail in the meeting room in order that everyone that wants to be heard on the piece of legislation would be heard, and anyone interrupting the meeting would have to be invited out. At that moment, Mr. Callender, who I didn't know at the moment, at that time, but I do know him now---
> Q. Is he present in the courtroom?
> A. Yes, he's in the back seat there. He stated, "We haven't started to disrupt your meeting yet." So the President called to Officer Downing to escort the individual out of the meeting room.********
> (3a-14 to 4a-7)

The record is replete throughout as to the conduct of the defendants after Callender had been forcibly removed from the council chamber. The defendants had positioned themselves in such a manner as to constitute a complete obstruction to the free and orderly ingress and egress of pedestrian traffic to the council chambers. Patrolman Robert Downing described it as follows:

> "When we first put Mr. Callender in the corridor this party sat beside him still locking his arms." (20a-22 to 25)

Sergeant James J. McDonough, also a member of the Trenton Police Department testified:

> Q. Could you describe their position?
> A. Yes sir, the position that Mr. Callender was in the second time when I'd come out when he stretched himself to the floor in a lying position other people had placed themselves on the floor in sort of a semi to nearly a full circle and interwound their arms and legs." (25a-44 to 25a-50)

Another sergeant of the Trenton Police Department, James E. McKeever, described the situation existing out in the corridor upon his arrival in the following manner:

> "Upon arrival at second floor level, City Hall, outside of City Council Chambers, which has been described many times here this morning, I observed five people, two men and three women, sitting in a circular or oblong position outside of the doors that led into the council chamber.
> Q. In a seated position?
> A. Yes, sir. They were seated some with their legs outstretched, some had their legs interlocked, and all had their arms interlocked one to the other to the person on either their right or their left.
> Q. And what did you then do Sergeant, if anything?
> A. Well, about that juncture Sergeant McDonough came back up from the first floor level, and I discussed the matter briefly with him and he apprised me that people had been asked to leave and

> refused to leave. And I went over and spoke to them and I asked all collectively, first collectively, and I asked each one individually to leave.
> Q. What was their reply?
> A. There was no reply nor was there any effort to leave.

It is this type of conduct which the statute seeks to eliminate. Defendant-appellants would urge this court to construe their actions as nothing more than an expression of fundamental basic rights which in effect are incorporated in the First Amendment to the Federal Constitution. The State is cognizant of these fundamental rights.

In Cantwell vs. Connecticut, 310 U.S. 296, 60 S. Ct. 900 (1940), the Supreme Court had before it a matter involving two members of the Jehovah's Witnesses who were convicted in the City of New Haven, on a charge of a commission of a common law offense of inciting a riot. They were upon a public street upon which they had a legal right to be; the record was absent of any testimony that their deportment was noisy, truculent, overbearing or offensive. Both defendants had sought to play certain records which was absolutely offensive to persons of the Catholic faith, however, permission to play the records was given. The court reversed their conviction, however, the court went on to say:

> The offense known as "breach of peace" embraces a great variety of conduct destroying or menacing public order and tranquility and includes not only violent acts but acts and words likely to produce violence in others. One may be guilty of breach of peace if he commits acts or makes statements likely to provoke violence and disturbances of good order though no such eventuality be intended.
>
> The state has the power to prevent or punish when clear and present danger of riot, disorder, interference with traffic upon public streets, or other immediate threat to public safety, peace or order, appears but the State may not unduly suppress full communication of views, religion or other, under guise of conserving desirable conditions.
> (60 Sup. Ct. 900, 905)

A recent pronouncement by the Supreme Court in Cox vs. Louisiana, U.S. , 85 S. Ct. 453 (1965) in an opinion by Justice Goldberg, now Ambassador, sets forth the principle involved:

> "Liberty can only be exercised in a system of law which safeguards order. We re-affirm that the repeated holding of this Court that our constitutional command of free speech and assembly is basic and fundamental and encompasses

> peaceful, social protest, so important to the preservation of the freedoms treasured in a democratic society. We also re-affirm the repeated decisions of this Court that there is no place for violence in a democratic society dedicated to liberty under law, and that the right of peaceful protest does not mean that everyone with opinions or beliefs to express may do so at any time or place. There is a proper time and place for even the most peaceful protest and a plain duty and responsibility on the part of all citizens to obey all valid laws and regulations to be drawn so as to give citizens fair warning as to what is illegal; for regulations of conduct that involved freedom of speech and assembly not being so broad in scope as to stifle the First Amendment freedoms, which need breathing space to survive."

Chaplinsky vs. State of New Hampshire, 315 U.S. 568, 62 S. Ct. 766, 86 L. Ed. 1031 (   ) a case involving Jehovah's Witnesses arising out of Rochester, New Hampshire. Member of the religious sect while speaking on a public street referred to certain police officials as "you are a _____ damn racketeer", "a damn Facist" and "the whole government of Rochester are Facist." The conviction was sustained. Again the court re-affirmed the doctrine that freedom of speech, press and worship are protected by the First Amendment of the Federal Constitution from infringement by Congress are among the fundamental personal rights and liberties which are protected by the Fourteenth Amendment to the Federal Constitution from invasion by state action.

Therefore, it would seem from an examination of the decisions involving "civil rights" that the scales of justice must necessarily balance, that the pendulum must be brought to center. Against the citizens' right to object and voice his opinion, there is a co-relative right in the governing body of a municipal government, duly convened for the orderly conduct of business to function and to be free from the unlawful or unreasonable interference in the conduct of that governmental business.

POINT II

IS N.J.S. 2A:170-29 (2) (b) INVALID BECAUSE IT VIOLATES THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE FEDERAL CONSTITUTION IN THAT ITS TERMS ARE VAGUE?

This precise question was raised in the matter of the State of New Jersey vs. Fred Furino, 85 N.J. Super. 345. In an opinion by Judge Goldmann at page 348 the court said:

1. Defendant's first argument is that N.J.S. 2A:170-29 (2) (b) is invalid because it violates the due process clause of the Fourteenth Amendment to the Federal Constitution in that it employs terms "so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application." The validity of a penal law, defendant argues, depends upon its language, and if the law fails to define the crime with sufficient certainty, it must fall, citing Lanzetta v. State of New Jersey, 306 U.S. 451, 59 S. Ct. 618, 83 L. Ed. 888 (1939); U.S. vs. Cardiff, 344 U.S. 174, 73 S. Ct. 189, 97 L. Ed. 200 (1952), and State vs. Caez, 81 N.J. Super. 315 (App. Div. 1963). We find no merit in this argument as applied to the present case, Furino.

> "N.J.S.A. 2A:170-29 provides, in pertinent part: 2. "any person who in any place, public or private *** B. Obstructs, molests or interferes with any person lawfully therein; **** is a disorderly person."

The three verbs are definite, clear and distinct, readily understood and employed in the every-day speech of the man on the street. Refined definition is unnecessary. "Obstruct" means to object or come in the way of; to hinder from action; to impede." "Molest" means to interfere with or meddle with unwarrantably. And "interfere" is defined as to enter into or take a part in the concern of others; to intermeddle, intervene. Webster's New International Dictionary (2d ed. 1948); and see 3 Wharton's Criminal Law (Anderson ed. 1957), 1284, page 634.

The court further said:

> "We conclude that the elements of the offense proscribed by the statute in question are specific. No man of common intelligence would have to guess at the meaning of the statute, and conduct condemned is certain."

CONCLUSION

For the reasons and the authority herein set forth the State respectfully submits as follows:

The action of the trial court in rendering a verdict of guilty as to the defendants herein was correct.

Testimony having been advanced dealing with the credibility of the witnesses on the behalf of the State and the testimony of the defendants was a matter for determination by the trial judge.

(a) The conviction of the defendant, Callender, for his conduction inside the counsel chambers was proper.

(b) The conviction of the defendant under N.J.S. 2A:170-29 (2) (b) for their conduct outside the counsel chamber was correct.

The judgments of convictions as to all defendants should be affirmed.

Respectfully submitted,

VINCENT PANARO
Mercer County Prosecutor

By: Edward J. Phelan
EDWARD J. PHELAN
Assistant Prosecutor

VP:EJP
ib

POINT 3. PROPERLY CONSTRUED, THE STATUTE SHOULD NOT COVER THE PEACEFUL PROTEST OF THESE DEFENDANTS.

Determination of the scope of the statute depends not only on a determination of the words "obstructs, molests or interferes", but also on a proper definition of "disorderly conduct". This is so because, not every obstruction could be punishable. People v. Nixon, 248 NY 182 (19). Thus only such obstructions which constitute disorderly conduct are punishable. The term "disorderly person", therefore, gives breadth to the statute. An analysis of these crucial terms follows:

(a) Disorderly Conduct.

Disorderly conduct is not an offense known to the common law, and can therefore exist only because of a statute so providing. State v. Labato, supra; In re Garofone, supra.

Statutes which are in derogation of the common law, particularly those which are penal in nature, must be strictly construed. State v. Klapprott, 27 NJL 395, 22A 2d 877 ( ). Unfortunately, the New Jersey cases arising under section 170:29 are few and most of the opinions are narrow holdings on narrow fact patterns shedding little light on the meaning of "disorderly conduct". See State v. Burkitt, 120 NJL 393 (1938); State v. O'Donnell, 200 A. 739 (SupCt, 1938); Central Railroad Co. v. Simandl, 124 NJ Eq 207 (Ct of Chancery, 1938); State v. Furino, 85 NJ Super 345, 204A 2d 718 (1964). Some of the cases do, however, give some indication of the meaning of the term by refusing to apply the statute in certain situations, although none of them make an effort to authoritatively interpret disorderly conduct. These cases generally lend weight to the view that a narrow interpretation of the statute is called for. Thus, where the defendant was accused of using "loud and offensive" language, the court found that merely loud language was not enough and said that if merely loud language were criminal, it would broaden the meaning of disorderly conduct. State v. Mullen, 67 NJL 343 (1906). In Ruthenbeck v. First Criminal Judicial & c., 7 Misc 969 NJ Sup Ct (1929), the defendant was convicted under section 3 of the Disorderly Persons Act for calling a police officer a "big muttonhead". The Court in declaring that this did not quality as "loud and offensive" language, said:

> "It is not every trivial epithet addressed by one person to another, even in the office of the clerk of the recorder's court and to a police officer doing desk duty there, that constitutes disorderly conduct."

In the case of Haywood v. Ryan, 5 NJL 116 (1913) the defendant was convicted of "obstructing or interfering" with traffic on a city street. He was being followed by a large crowd which completely blocked other pedestrians. The Court, in giving the statute a narrow interpretation, said that the provision was not intended to apply to those unintentionally blocking the street and that mere notoriety could not make one a disorderly person. Thus although the pedestrians were definitely obstructed, the defendant was not a disorderly person, and so he did not violate the statute.

In New York the statute enumerating acts which constitute disorderly conduct (§ 722 of the New York Penal Law; including subd. 2: "obstructing, interfering, (etc.) ... in a public place") describes the nature of such offenses as constituting or tending toward a "breach of the peace". The New York Court of Appeals said that in interpreting disorderly conduct offenses, the common law definition of breach of peace, "though not controlling is helpful in ascertaining the nature of the acts proscribed by the statute." People v. Carcel, 3 NY2d 327 (1957); People v. Most, 171 NY 423, 429. In the Carcel case the New York Court of Appeals, citing People v. Most, supra, and Cantwell v. Connecticut, 310 US 296, 308, defined breach of the peace as a

> "disturbance of public order by an act of violence or by any act likely to produce violence, or which by causing consternation and alarm disturbs the peace and quiet of the community."

The New York disorderly conduct statute (Penal Law, § 722), as stated above, includes the limiting "breach of the peace" terminology in its opening paragraph. The New Jersey statute does not. Other states, however, which, like New Jersey, have statutes which lack a "breach of the peace" limitation, have, through judicial interpretation decided that only such acts are punishable:

> "... as actually tend to disturb the public peace and quiet." State v. Robinson, 28 Conn Supp 430, 184 A 2d 188, 97 ALR 2d 500 (1962). State v. Gist, 237 SC 262, 116 SE 2d 856 ( ). The Robinson case, supra, actually cites New York cases to this effect (People v. Mounier, 280 NY 77, 19 NE 2d 789 ( ).

Moreover, it has often been said that due to the similarity of disorderly conduct and common law breach of the peace:

> "... the defendant may ... raise any defense which negates the existence of any of the elements of the offense of breach of the peace." Whatton's Criminal Law, supra, at 663.

Thus, only an act which "obstructs or interferes with any person" to the extent of creating a breach of the peace should be punishable under § 170:29(2)(6). As illustrated above, several states have limited the operation of statutes against "obstructing or interfering" to breach of the peace situations. New Jersey has not. State v. Caex, 81 NJ Super 315 (AD 1963); State v. Furino 85 NJ Super 345, 204 A 2d 718 (1964). A failure to do so places no minimum standard on what "obstructions" are punishable and serious "due process" and "free speech" problems arise.

(b) Obstructing or Interfering.

"Guided by this definition [of breach of peace] the courts have indicated that something more than a mere inconveniencing of pedestrians is required to support a convection [for obstructing or interfering]." People v. Carcel, supra.

In People v. Nixon, 248 NY 182, 187-188, the Court took note of the fact that "men and women constantly congregate or walk upon the streets in groups, quite oblivious to the fact that to some degree they are thereby causing inconvenience to others using the street." In the Nixon case, the conduct determined not to be sufficiently "obstructive or interfering" was a parade in which defendants were marching four abreast and pedestrians were "just barely getting through." Yet, though defendants were certainly obstructing others, there was no breach of the peace, and hence no criminal conduct under the statute. It may be said as well of the defendants in the present case that they committed no "breach of the peace" and that they were certainly not "disorderly." Their peaceful action caused neither "violence," nor "the threat of violence," nor "alarm" nor a disturbance of the "peace and quiet of the community," nor, for that matter, did their action cause anything more than in "inconvenience." It is even doubtful from the record that anyone (with the possible exception of Mr. Maziarz, the Clerk of the Council) was so much as inconvenienced by the "sit-down."

In State v. Furino, supra, the Appellate Division of the Superior Court upheld a conviction under § 170:29 (2)(b) where, the defendant was accused of interfering with the arrest of another by the use of physical force against the arresting officers. The present case can and should be distinguished from Furino. Here, the defendants behaved peacefully. Furthermore, it was the purpose of these defendants to petition for a redress of grievances (D A). Unlike Furino, it was not their purpose to obstruct, although that may have been an incidental result. Cox v. Louisiana, supra. The Courst in the Furino case said that the three verbs "obstruct, molest and interfere" are:

> "... definite, clear and distinct, readily understood and employed in the every day speech of the man on the street... .
> 'obstruct' means to object or come in the way of; to hinder from action; to impede.
> 'molest' means to interfere with or meddle with unwarrantably. And 'interfere' is defined as to enter into or take part in the concern of others; to intermeddle; intervene. Webster's New International Dictionary (2d Edition 1948);
> 3 Wharton's Criminal Law (Anderson Ed. 1957) § 1284 p. 634."

Although the words "obstruct, molest and interfere" and their definitions, cited above, may clearly have divined criminal conduct when applied to the facts in the Furino case, if literally, uniformly and blindly applied, they would punish completely innocuous conduct (such as the examples set forth in the Nixon case, supra) or other, more purposeful deeds which though they produce incidental "obstruction, molestation or interference" are, nonetheless, constitutionally protected as a "peaceful expression of unpopular views," Edwards v. South Carolina, supra; Fields v. South Carolina, supra; Henry v. Rock Mill, supra, Cox v. Louisiana, supra, Cantwell v. Connecticut, supra, (see Point 4 which follows).

That this danger is real is illustrated by State v. Guillotte, 10 NJ Super 502 (1951), in which the Essex County Court found that one person who was moving about while distributing leaflets on a busy street corner was guilty of obstructing and interfering with pedestrians under the provisions of section 202-7. The case is unreasonable in the breadth which it gives to the terms of the statute. On constitutional grounds, the case is nothing more than a "sport." Compare, in particular, Cantwell v. Connecticut, supra.

In conclusion, to constitute punishable "obstruction, molestation or interference", the conduct should be more than a mere annoyance before it is allowed to fit within the terms of the Act. It should, in fact, constitute so substantial a blockage as to be a "disturbance of the peace" as defined above. As to the conduct of the defendants in the present cases, it seems fair to say that if they had merely stood together in a group, no one would even have noticed them, though sitting down they became the objects of attention and arrest. This is so in spite of the fact that seated, they were hardly more of an obstruction than they would have been had they remained standing. The "sit-down", moreover, was by all accounts silent, non-violent, and, but for the possible exception of Mr. Maziarz, non-obstructive. As wrongdoing, it does not rise above the level of bad manners, which no legislature has seen fit (or could) to make criminal.

(c) The Defendants were Present in the Building

Lawfully and for a valid purpose, the defendants in this case were arrested in a place in which they had a right to be. The hall in which the Council meeting was held was a public place and it was open to the public at the time. Furthermore, the defendants' purpose in entering and remaining in the building was not only consistent with the use of the building but also for the purpose of exercising their constitutional rights. The defendants' purpose was the "peaceful expression of unpopular views," and the desire to petition for a redress of grievances. In fact, they were in a position similar in many respects to that of the defendants in the Edwards case. In Edwards, the defendants were on the state house grounds for the purpose of holding a peaceful demonstration and to petition the legislature. They were, like the defendants in the instant case, in a public place outside a public meeting, for an identical purpose. In Henry v. Rock Hill, supra, the facts are also similar. In fact, in the Henry case, the demonstration produced so much noise that the Council meeting going on inside was actually interfered with. Fields v. South Carolina and Cox v. Louisiana, supra, are to the same effect.

In many other cases, the rights of citizens to demonstrate peacefully in public places, has been upheld: People v. Remsen, 63 NYS 2d 860 (inside municipally owned airport); *Taylor* v. *Louisiana*, 370 US 154 (interstate bus waiting room).

POINT 4. EACH FACTOR OF THE OFFENSE MUST BE PROVED SEPARATELY AGAINST EACH DEFENDANT.

Although the New Jersey disorderly persons statutes are "quasi-criminal", the "rules of the criminal law are applicable to prosecutions under the disorderly persons law." O'Regan & Schlesser, *Criminal Laws of New Jersey*, vol. 2, section 1787. *State* v. *Labato*, 7 NJ 137 (1951); *State* v. *Rodgers* 91 NJL 212 (E. & A. 1917).

Disorderly conduct prosecutions involving more than one person can not be "jointly" conducted where the offenses are "several and distinct". In *Handlin* v. *State*, 16 NJL 96 (1837), a conviction under § 170:28 for disturbing an assembly was overturned for this reason. In the *Handlin* case, a joint summons and complaint was used, joint offenses were charged, and the defendants were jointly convicted. In the present case, too, proof of "obstruction or interference" again *each defendant*, should be required. It must be shown that each defendant could actually be identified as an "obstructor" and how, if at all, each defendant obstructed. No general showing that defendants were a group *some of whom* may have formed an obstruction would be sufficient. None of the witnesses at the trial, however, were able to authoritatively identify which defendants obstructed the entrance to the City Council Camber (D. ____ A.) and the Court made no effort to examine the manner in which each defendant contributed, separately and distinctly, to the obstruction, if at all (D. ____ A.).

POINT 5. THE ARREST OF THESE DEFENDANTS UNDER § 170:29 (2)(b) VIOLATED THE FIRST AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

Points 3 & 4 dealt with the reasons why § 170:29 (2)(b) *should not* apply to the defendants herein. This point and Point 6 will probide arguments leading to the conclusion that the statute *may not* constitutionally be applied to the conduct of these defendants.

In *Thomas* v. *Collins*, 323 US 516, 537, Mr Justice Rutledge clearly expressed the fact that

> "It is ... in our tradition to allow the widest room for discussion, /and/ the narrowest range for its restriction, particularly when the right

> is exercised in conjunction with peaceable assembly."

Although the right to freedom of speech is not unlimited, it is:

> "... protected again censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evel that rises far above public inconvenience, annoyance or unrest." Edwards v. South Carolina, supra at 236.

The nature and extent of the powers of the state to x impose limitations has been clarified in recent years. The state may, among other things, not pertinent here, make reasonable traffic regulations. Cox v. New Hampshire, 312 US 569 (   ). It could prevent persons from forming " a cordon across the street" and allow "no pedestrian to pass who did not accept a tendered leaflet." Schneider v. Irvington, supra at 160. But a state could not under a general statute which in its terms could include even the most harmless conduct, prevent incidental obstructions arising from the "peaceful expression of unpopular views." This is most clear in cases in which the extent of physical obstruction is not great, as in Cantwell v. Connecticut, supra, where the objectionable act is committed by one person. But it is also clear that greater obstructions resulting from huge demonstrations are also allowed constitutional protection. Field v. South Carolina, supra; Henry v. Rock Hill, supra; Cox v. Louisiana, supra. In all 3 cases the demonstrators' presence forced pedestrians off the sidewalk. In the Henry case, the demonstrators sang so loud thal all work in the City Hall was not only interfered with, but also completely disrupted. In Cox v. Louisiana, supra, the Supreme Court recognized that the street was completely blocked by the demonstrators, but nonetheless overturned the convictions. The Louisians statute is remarkably similar to § 170:29 (2)(b) involved in this case:

> "Obstructing Public Passages.
> No person shall wilfully obstruct the free, convenient and normal use of any public sidewalk, street, highway, bridge, alley, road or other passageway, or the entrance corridor or passage of any public building.../etc./ by impeding, hindering, stifling, retarding or restraining traffic or passage thereon or therein."

As in this case, the defendants in the Cox case intended to petit
to petition for a redress of grievances. It was not the purpose of either the defendants in Cox, or here (D.____A.) to obstruct traffic. As regards the purpose

of the demonstrators in the Cox case, the Court said:

> "In upholding appellant/s conviction under this statute, the Louisians Supreme Court thus construed the statute so as to apply to public assemblies which do not have as their specific purpose the obstruction of traffic. There is no doubt from the record in this case that this far sidewalk was obstructed, and thus, as so construed, appellant violated the statute."

The unbridled discretion of police officers and their application os such broad statutes to conduct such as that of the defendants in the present case was analyzed by the court:

> " "The pervasive restriant on freedom of discussion by the practice of the authorities under the statute is not any less effective than a statute expressly permitting such selective enforcement." Cox v. Louisiana, supra, at __________.

In this case, the demonstrators "sat-down" quietly (D. ________ A.). They gave no grounds for fear that violence of any sort of major outbreak would occur. There was no threat of violence from hostile observers, as there was in the Edwards, Fields, Henry, and Cox cases, supra. Nor would this have mattered in view of the fact that there was at all times adequate police protection.

The fact that defendants were sitting down rather than picketing or marching does not in any way diminish the extent of their First Amendment protection. This is evident from the cases stemming from "sit-down" demonstrations at lunch counters. Notably, Mr. Justice Harlan's concurring opinion in *Garner* v. *Louisiana*, supra, at 201:

> "The Court has never limited the right to speak, a protected liberty under the Fourteenth Amendment...to mere verbal expression. The act of sitting at a privately owned lunch counter with the consent of the owner as a deminstration of opposition to enforced segration, is surely within the range of protections."

POINT 6. THE STATUTE IS UNCONSTITUTIONALLY VAGUE.

As stated in Point 5, a literal interpretation of section 17):29(2)(b) as in *State* v. *Guillotte*, would apply the statute to the commonest varieties of conduct. Statutes capable of such interpretation are susceptivle to attacks on grounds of vagueness on fact patterns of the same type as those in the present cases.

In *Cantwell* v. *Connecticut*, 310 US 296, defendants convicted under a general greach of the peace statute for stopping pedestrians and playing a phonograph record containing "offensive" language, the Court said:

> "Although the contents of the [phonograph] record not unnaturally aroused animosity, we think that in the absence of a statute narrowly drawn to define and punich specific conduct as constituting a clear and present danger to a substantial interest of the state, the *petitioner's communication, considered in the light of the constitutional guarantees, raised no such clear and present menace to public peace as to render him liable to conviction* of the common law offense in question."

Yet in the *Cantwell* case, the defendants were definitely active, while here the defendants were completely passive.

Although the New Jersey statute forbidding obstructing and interfering is broad, it is not a general breach of the peace statute. When such statutes are struck down it is usually, as in the *Cantwell* case, because they define no specific form of conduct. In the case of statutes in the nature of section 170:29(2)(b) a "type" of conduct is mentioned generally, but no standard is provided for determining the extent to which the conduct must be indulged in to be punishable. As stated previously, even innocuous or incidental obstructors could become the subjects of punishment. *People* v. *Nixon*, supra; *People* v. *Carcel*, supra; contract, *People* v. *Guillotte*. Unlike the New Jersey statute, the New York statute provides *both* the broad, common law "breach of the peace" standard and the more specific terminology ("obstructs, interferes,..., etc." Penal Law, § 722, supra). If New Jersey places a "breach of peace" limitation (such as that applied by New York, set forth in part 1) on "obstruct or interfere", the problem is alleviated. In such an event, moreover, the "peaceful expression of unpopular views" engaged in by the defendants in this case, as well as other conduct undamaging to the well-being of the community, would need no protection against a vague statute.

If, on the other hand, the New Jersey courts fail to impose a reasonable limitation on the words "obstruct or interfere" (State v. Furino, supra), it would, as now, be necessary to "speculate as to the meaning of penal statutes." Lanzetta v. New Jersey, 306 US 451 (1939); State v. Caez, supra.

POINT 7. THE CONVICTION OF DEFENDANT CALLENDAR UNDER § 170:29(2)(b) FOR REMAINING WHERE THE POLICE PLACED HIM VIOLATE DUE PROCESS.

The approach taken by the police to the defendants in these cases is clearly illustrated by the case against

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APPENDIX

Opinion of Weintraub, *C.J.*

SUPREME COURT OF NEW JERSEY

A-69 September Term 1965

The State of New Jersey,

Plaintiff-Respondent,

—v.—

Louis S. Smith, Herbert E. Callender, Marva L. Amis, Lily R. Lewis, Willard D. Crittendon, Joyce L. Schuric,

Defendants-Appellants.

Argued December 21, 1965—Decided

Mr. Carl Rachlin, of the New York bar, argued the cause for appellants (*Mr. Stephen M. Nagler* and *Mr. George Schiffer,* of counsel; *Mr. David I. Fox,* attorney).

Mr. Edward J. Phelan, Assistant Prosecutor, argued the cause for respondent (*Mr. Vincent Panaro,* Mercer County Prosecutor, attorney).

The opinion of the Court was delivered by

Weintraub, *C.J.*

The six defendants were convicted in the Municipal Court of the City of Trenton of violating two sections of the Disorderly Persons Act. On a trial *de novo* in the Mercer County Court, defendant Callender was again convicted on both counts and fined $100 as to each. The remaining defendants were found guilty of only one of the two charges and each was fined $100. We certified defendants' appeals before argument in the Appellate Division.

The setting of these offenses was a public meeting of the governing body of the City of Trenton held at the council chamber and called to consider an urban redevelopment program. While a citizen was speaking against the proposal, there was a disturbance in the area in which defendant Callender was seated. This was the second such distraction from that direction. The president of the City Council called for quiet so that speakers might be heard and warned "that if there were not silence we would have to ask them to leave or ask them to be removed by the sergeant-at-arms." According to the State's proof, Callender retorted "We haven't started to disrupt your meeting yet," or "We have not begun to interrupt your meeting yet." According to the defense, he said "We haven't done anything yet." These versions really differ very little since under each the word "yet" could carry the promise or threat that the disturbances would be repeated and in greater volume. So understanding Callender, the president of the Council directed a police officer to escort him from the room.

The disturbance just described was not the basis of the conviction. Rather the basis was Callender's resistance to the efforts to remove him. He locked arms with someone seated next to him and went limp. Two police officers, in the words of a witness, "had a little problem in lifting him because he's a pretty big boy," and "As they got him out of the seat he sort of fell to the floor or slid to the floor and just laid there for a moment or two, or maybe ten or fifteen seconds, and then one officer took him by his feet and the other took him by his arms and they sort of half dragged and half carried him out of the meeting chamber and deposited him in the corridor or the entrance into the chamber." While Callender was thus being removed, persons near him chanted "Freedom." The president of the Council asked the speaker then on the floor to talk more loudly to overcome the distraction and according to one witness the speaker in fact said nothing during the commotion. Upon those facts the county court found Callender guilty of violating N. J. S. A. 2A:170-28 which reads:

> "Any person who by noisy or disorderly conduct disturbs or interferes with the quiet or good order of any place of assembly, public or private, including schools, churches, libraries and reading rooms, is a disorderly person."

As stated above, Callender was carried into the corridor just beyond the door to the chamber, and still limp, he was lowered to the floor. Callender stretched out his legs, and the five codefendants seated themselves on the floor in a semicircle, arms and legs interlocked or intertwined. We gather they were carried away before the public meeting ended. Out of this setting stemmed the conviction of all defendants under N. J. S. A. 2A:170-29 which denounces as a disorderly person:

> "Any person who in any place, public or private, * * *
>
> b. Obstructs, molests or interferes with any person lawfully therein; * * * "

The factual picture will be enlarged below.

I.

Defendant Callender contends his conviction under N. J. S. A. 2A:170-28 is against the weight of the evidence. We see no basis to interfere with the trial court's findings. The testimony well warranted a finding that Callender's resistance to the efforts to remove him from the chamber was disorderly, and that that conduct, with the noise necessarily generated by the mode of removal to which Callender put the police officers, did disturb the quiet and good order within the chamber.

Callender's point seems to be that his conduct could not be found to disturb or interfere with the quiet or good order of the meeting because he was "wholly passive." It toys with words thus to describe his behavior. Rather he resisted removal in affirmative terms, both in locking arms with another and in confronting the officers with his dead weight. And it is idle to say, as does defendant, that "the crucial element of intention to disturb is consequently totally lacking." The normal inference is that he intended precisely what he accomplished.

Defendant says the statute does not apply because the phrase "place of assembly, public or private, including schools, churches, libraries, and reading rooms" does not include the public meeting room of a city council. He contends the word "including" limits "place of assembly" to places which are like a school or a church or a library or a reading room, and says the council chamber resembles none of them.

Prior to the adoption of this provision by the revision of Title 2, effective January 1, 1952, the disorderly persons statute spoke specifically of, and only of, "a public school," R. S. 2:202-12; a place of worship, R. S. 2:210-1;

and "a public library or reading room," R. S. 2:202-11. The revision of 1952 deliberately expanded the area of protection to "any place of assembly," whether "public or private." The specification after the word "including" was not intended to restrain the general words preceding it. See generally *Cuna* v. *Board of Fire Com'rs of Avenel*, 42 N. J. 292, 304-05 (1964). Indeed, if "including" had that effect, the specifics would likely exhaust the general words since it is difficult to think of a place which is like, but is not, a school or a church or a library or a reading room. Rather the draftsman specified those four places to avoid any question as to whether they continued to be protected and perhaps also to make it clear that, whereas under the prior statutes the protected schools, libraries and reading rooms were "public" ones, the revision protected "private" ones as well.

Nor can we distill from the places thus specified some characteristic levels of noise and other conduct, and use those levels as an index of places covered by the statute. For one thing, to read the statute to mean that it applies only to a place of assembly wherein the tolerable noise level and tolerable behavior are those expected in a school or a church or a library or a reading room would probably render the general words too vague to survive a constitutional challenge as to them under the due process clause. In any event we see no reason to deny to "any place of assembly, public or private" the natural meaning of those words. Surely, to come to the facts of this case, it should surprise no one that misbehavior disruptive of a hearing before a city council runs afoul of some punitive law, and surely a man of modest understanding, had he consulted the statute in advance of the meeting, would not doubt that it covered the place and the occasion.

Next, defendant addresses sundry constitutional attacks upon the statute and upon its application to his conduct. We see no substance in any of them.

Running throughout defendant's position is the claim that his behavior was protected by the First Amendment to the United States Constitution, for which he cites *Garner* v. *Louisiana,* 368 U. S. 167, 7 L. ed. 2d 207 (1961); *Edwards* v. *South Carolina,* 372 U. S. 229, 9 L. ed. 2d 697 (1963); *Henry* v. *Rock Hill,* 376 U. S. 776, 12 L. ed. 2d 79 (1964); *Cox* v. *Louisiana,* 379 U. S. 536, 13 L. ed. 2d 471 (1965); and *Cox* v. *Louisiana,* 379 U. S. 559, 13 L. ed. 2d 487 (1965). Those cases involved peaceful protests against discrimination because of race, the settings being private places of public service such as lunch counters or public places such as a street or an area in front of a city hall. None remotely resembles the case before us.

Here there was no denial of an opportunity to protest. On the contrary the meeting was called to the very end of permitting all to have their say, for or against the urban redevelopment proposal. Callender was not denied a chance to be heard. Rather he was denied a right he seemingly claimed to interfere with the right of others to hear and be heard. He was not ordered removed because he expressed views which displeased the presiding officer. He was ordered out because, in response to the president's call for quiet, he threatened even greater disruption of this public meeting. Whether the forum be the courtroom or the chamber of the legislature itself or of a political subdivision of the State, there must be order. It is frivolous to suggest the First Amendment stands in the way of that imperative.

Nor is there substance to Callender's proposition that he had a right to resist removal from the chamber in order to test the validity of the order that he leave. In fact, if such a right were recognized, it would not aid him since the record amply justifies the belief of the president of the Council that defendant intended to interfere with the good order of the hearing. But the more fundamental answer is that the decision of the presiding officer cannot be tested by physical resistance. The remedy, if there is one, must lie elsewhere. Government could not govern if its vital processes could thus be brought to halt. Again, no court would tolerate such interference with its proceedings; the need is the same in the legislative chamber, at the State and at the local level. The chair must have the power to suppress a disturbance or the threat of one, and the power to quell a disturbance would be empty if its exercise could be met by still another disturbance designed to test the officer's judgment.

Although, as we have said, none of the cases cited above factually touch the situation before us, it is plain that *Cox* v. *Louisiana* rejects the notion that lawlessness may pass in the garb of a constitutional guarantee. The majority opinion reminds us (379 U. S. at 554; 13 L. ed. 2d at 484):

> "From these decisions certain clear principles emerge. The rights of free speech and assembly, while fundamental in our democratic society, still do not mean that everyone with opinions or beliefs to express may address a group at any public place and at any time. The constitutional guarantee of liberty implies the existence of an organized society maintaining public order, without which liberty itself would be lost in

the excesses of anarchy. The control of travel on the streets is a clear example of governmental responsibility to insure this necessary order. A restriction in that relation, designed to promote the public convenience in the interest of all, and not susceptible to abuses of discriminatory application, cannot be disregarded by the attempted exercise of some civil right which, in other circumstances, would be entitled to protection. One would not be justified in ignoring the familiar red light because this was thought to be a means of social protest. Nor could one, contrary to traffic regulations, insist upon a street meeting in the middle of Times Square at the rush hour as a form of freedom of speech or assembly. Governmental authorities have the duty and responsibility to keep their streets open and available for movement. A group of demonstrators could not insist upon the right to cordon off a street, or entrance to a public or private building, and allow no one to pass who did not agree to listen to their exhortations. * * *

We emphatically reject the notion urged by appellant that the First and Fourteenth Amendments afford the same kind of freedom to those who would communicate ideas by conduct such as patrolling, marching, and picketing on streets and highways, as these amendments afford to those who communicate ideas by pure speech. * * * We reaffirm the statement of the Court in Giboney v. Empire Storage & Ice Co., supra, 336 U. S. at 502, 93 L. ed. at 843, that 'it has never been deemed an abridgment of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed.' "

Finally defendant says the statute is void for vagueness because it does not spell out the degree of noise or the details of a disorder which will offend. Of course, the statute does not do so in specific terms, and it may be doubted that the ingenuity of man could meet that demand if the Constitution made it. But the Constitution does not insist upon the impossible. It asks only what the subject will reasonably permit, and hence if there is a public interest in need of protection, due process does not stand in the way merely because the subject defies minute prescription.

The basic principle is that a statute is bad if it "either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application," *Connally* v. *General Construction Co.*, 269 U. S. 385, 391, 70 L. ed. 322, 328 (1926). As that case points out, the subject matter itself may give adequate content to words which, considered alone, may seem forbiddenly obscure. Moreover, if the subject is such that greater specificity is not feasible, we must remember, as was said in *Boyce Motor Lines, Inc.* v. *United States,* 342 U. S. 337, 340, 96 L. ed. 367, 371 (1952), that:

> " * * * But few words possess the precision of mathematical symbols, most statutes must deal with untold and unforeseen variations in factual situations, and the practical necessities of discharging the business of government inevitably limit the specificity with which legislators can spell out prohibitions. Consequently,

> no more than a reasonable degree of certainty can be demanded. Nor is it unfair to require that one who deliberately goes perilously close to an area of proscribed conduct shall take the risk that he may cross the line."

Hence it would not necessarily "be fatal if incongruities or problems of construction should develop in fringe areas." *State* v. *Monteleone,* 36 N. J. 93, 98 (1961). In such circumstances, the courts can see to it that a statute is not applied beyond a fair understanding of the legislative intent.

The statute before us meets the constitutional demand. It speaks of "noisy or disorderly conduct" which "disturbs or interferes with the quiet or good order" of "any place of assembly, public or private." Surely, a man of ordinary intelligence knows the council chamber at the time of a public hearing is a public "place of assembly." So, too, such a man knows the "quiet or good order" of a place depends upon the nature and the purpose and the needs of the meeting. He also knows a legislative chamber from a barroom or a ball park and knows what kind of behavior comports with each.

Hence the statute is valid on its face. It is also valid as applied in this case. For a man to refuse to leave upon the order of the president of the Council, to resist removal by locking arms with another and requiring two officers to carry and drag him from the chamber, is clearly foreign to the nature and purpose of the assembly, and the actor should not be surprised by a decision that his conduct was "disorderly" and did disturb and interfere with both the "quiet" and "the good order" of that meeting.

II.

All defendants contend their convictions under N. J. S. A. 2A:170-29 for obstructing or interfering with persons lawfully in a public place, were against the weight of the evidence. We are satisfied they were not.

The testimony was conflicting. For the State the testimony showed a double door, each section three feet in width, separated the corridor from the council chamber; that defendants so arranged themselves that one door could not be opened at all; and that while the other could be opened partially, a person could pass only with difficulty, either by stepping over defendants or squeezing around them. Defendants testified that the few persons who passed did so easily. Callender added a claim that when he attempted to rise, a police officer prevented him, while the State's testimony was firm that both Callender, notwithstanding his behavior in the council chamber, and the other defendants were asked to leave but declined so much as to answer. The issue was one of credibility, and since the County Court had the advantage of seeing and hearing the witnesses, we should not reject findings which are well supported in the written record.

It does not matter that persons managed to get by or that none was delayed for anything beyond a minute. The statute does not require that the obstruction or interference be complete or enduring. The word "obstruct" includes hindering, *State* v. *Furino,* 85 N. J. Super. 345, 348 (App. Div. 1964), and of course "interfere" does not require a total frustration. It is enough that defendants immobilized themselves at a place designed for passage, and did so for the purpose, as their attitude of immobility strongly suggested, and with the effect of making it difficult for others to use the corridor in going in and out of the council chamber.

Defendants cannot find help in *People* v. *Nixson,* 248 N. Y. 182, 161 N. E. 463 (Ct. App. 1928), where, as the court said, "The sole question is whether a number of pedestrians walking, quietly, four abreast, on the sidewalk, creating no excitement, or disturbance, may without warning by the police be arrested for disorderly conduct and sentenced to a term of imprisonment" (161 N. E. at 466). Indeed the court there affirmed the conviction in four cases in which the defendants failed to heed the warning of the police to cease marching in large groups where the police feared the possibility of disorder (161 N. E. at 466). In the case on hand, defendants were not merely standing in the corridor with no intent to block it. Rather defendants intentionally obstructed the passageway, assuming positions of immobility from which those who would want to pass would know defendants would not budge.

Defendants further urge that despite the unity of action and purpose with which they arranged themselves on the floor, the guilt of each must be judged severally upon an inquiry as to whether he or she alone obstructed or interfered with passage. The proposition is frivolous.

Defendants say the statute is invalid on its face because it does not require proof of a breach of the peace. We do not understand the police power to be so limited. In any event the statute proscribes conduct which holds the promise of a disorder of that kind, and we have no doubt the State may deal with it punitively on that account.

Finally defendants say the statute is invalid as applied to the facts of this case. That contention largely depends upon factual assertions which the trial court did not believe. Beyond that, defendants seem to be repeating the broad proposition we rejected in "I" above, that they have a constitutional right to express their grievances in the way they think meet, here by sitting at a place intended for walking and to do so in a manner which interferes with others who want to pass. The right to protest does not include a right to disregard statutes reasonably designed to protect the rights of all. If the grievance at that point was, as it seems, the removal of Callender from the council chamber, surely the Constitution does not accord to all who disagree with the order of the presiding officer, a right to stretch out across the entrance to the forum.

The judgments are affirmed.

Mandate on Affirmance

SUPREME COURT OF NEW JERSEY

Appeal Docket No. 4902

Criminal Action on Appeal

State of New Jersey,
Plaintiff-Respondent,

—v.—

Louis S. Smith, *et als.*,
Defendants-Appellants.

This cause having been duly argued before this Court by Mr. Carl Rachlin, counsel for the appellant and Mr. Edward J. Phelan, counsel for the respondent, and the Court having considered the same,

It is hereupon ordered and adjudged that the judgment of the said Mercer County Court is affirmed with costs; and it is further ordered that this mandate shall issue ten days hereafter, unless an application for rehearing shall have been granted or is pending, or unless otherwise ordered by this Court, and that the record be remitted to the Mercer County Court to be there proceeded with in accordance with the rules and practice relating to that court, consistent with the opinion of this Court.

WITNESS the Honorable JOSEPH WEINTRAUB, Chief Justice, at Trenton on the 21st day of March, 1966.

JOHN H. GILDEA
Clerk of the Supreme Court

FILED
MAR 21 1966

JOHN H. GILDEA
Clerk

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Clerk

Supreme Court of New Jersey

Appeal Docket No. 4902

State of New Jersey,
Plaintiff-Respondent,

vs.

Louis S. Smith, et als.,
Defendants-Appellants.

Criminal Action

On Appeal

Mandate on Affirmance

This cause having been duly argued before this Court by Mr. Carl Rachlin, counsel for the appellant and Mr. Edward J. Phelan, counsel for the respondent, and the Court having considered the same,

It is hereupon ordered and adjudged that the judgment of the said Mercer County Court is affirmed with costs; and it is further ordered that this mandate shall issue ten days hereafter, unless an application for rehearing shall have been granted or is pending, or unless otherwise ordered by this Court, and that the record be remitted to the Mercer County Court to be there proceeded with in accordance with the rules and practice relating to that court, consistent with the opinion of this Court.

WITNESS the Honorable JOSEPH WEINTRAUB, Chief Justice, at Trenton on the 21st day of March, 1966.

John H Gildea
Clerk of the Supreme Court

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STATEMENT OF FACTS

A meeting of the City Council of Trenton was called for the evening of November 5, 1964 for the purpose (among others) of discussing the John Fitch Way Project, an urban redevelopment scheme, and hearing testimony from interested persons (3a-24-28; 12a-6-15).

The project was and is controversial because it involves the removal of several hundred poor families without adequate arrangements for relocation, and offers to build middle income housing in its place. The Council had been advised in advance that there was considerable community opposition in the affected community and that people planned to come before the Council to express their objections (12a-8-22). Members of CORE and the NAACP, among other interested groups, as well as other deeply concerned individuals actually attended the meeting for this purpose (36a-15-18), and a large number of persons were present. Many people brought signs which they waved to show their support of the speakers (36a-36-37a-8). As the meeting proceeded several speakers came forward to address the Council. Their words were greeted with numerous vocal reactions from all over the audience (37a-12-22). Speakers were often interrupted by the members of the Council and Council

President Walsh, which led to a shout of "Let him speak" (37a-35) from somewhere in the room. These protests against the apparent harrassment of speakers by the President and Council were most notable when Odell Bradley, a resident of the area affected by the relocation project (3a-24-28), rose to speak (3a-18-22). Mr. Bradley was unable to convey his views through the screen of interruptions from the Council and its President. He finally asked in despair "Where will I go?" (37a-31-52). When President Walsh answered that he didn't know, Bradley complained that even a dog has a home (37a-32-34). The admonition of Mr. Bradley by the President for his comment (37a-34-35), evoked a strong vocal reaction of disapproval from the audience (37a-35-36; 42a-40-42).

At this point, President Walsh called for quiet in the room and stated (looking toward Mr. Callender) (12a-36-34) that anyone who created a further noise would be asked to leave (12a 37-40). Mr. Callender, a representative of CORE, which had been attempting to assist residents of the Fitch Way area,believed the words to be directed to him. He therefore stood up and responded: "We haven't done anything yet." (or words to that effect) (3a-44-4a-5; 12a-42), whereupon President Walsh instructed Patrolman Downing to remove

Mr. Callender from the room (4a-5-7).

The record does not show that Walsh ever asked Callender to leave prior to the time that he gave the order that Callender be removed. Mr. Callender was then carried out by Officer Downing and Sergeant McDonough (4a-19-29; 13a-24-26). Callender did nothing to resist the two officers, but merely, by remaining passive, did not assist in his own removal (4a-19-29). A number of other people in the audience began chanting "Freedom" (13a-22-23) in protest against the wrongful removal of Mr. Callender. Because Mr. Callender is a large man, some noise was produced when he was dragged over the seats and along the floor out of the Council Chamber (4a-19-29). He made no effort to resist. On the facts Defendant Callender was convicted of violating NJSA (1952) Chap. 2A:170-28, the court below saying, "There is no question this was established regarding Mr. Callender by his actions inside the chamber after he was asked to leave certainly by President Walsh and I believe, as a matter of fact, by Officer Downing." (63a-10-15).

Mr. Callender was set down outside the Council Chamber and remained on the spot on which he was placed until he was subsequently removed by the police (43a-25-28). There was testimony that Mr. Callender attempted to rise to leave, and that he was told that he could not by the police (38a-34-36). This was denied by the police (59a-28-32; 61a-16-23) indicating that nothing done by Mr. Callender up to that time (inside the meeting room) was regarded as unlawful. He did not attempt to move into a position in which he could block the doors to the Council Chamber, nor, for that matter, did he move in any way except to bend and unbend his legs for the purpose of making himself more comfortable (44a-10-14). The other defendants left the meeting voluntarily (4a-38-44). After some discussion, the other defendants sat down or crouched next to and in front of Mr. Callender (38a-38-43).

It is unclear from the record that the defendants actually interfered with the progress of any person into or out of the Council Chamber. The only testimony on the record indicating that anyone at all was in any way even inconvenienced in his movements by the presence of the defendants was that of Mr. Maziarz, the clerk of the council (5a-5-14) and he claimed only to have been delayed for less than a minute (10a-35-37). In addition, in his testimony Mr. Maziarz did not even claim that he asked any person who might conceivably have hindered his departure to move out of his way, and he was unable to identify exactly which defendants blocked his route (9a-24-34; 10a-31-33). Other witnesses for the State testified to the effect that they saw no one entering or leaving the Council Chamber (16a-17-19; 30a-10-11) which, of course, means that they saw no one else obstructed or impeded in any way. Mrs. McCrea, who testified on behalf of the defendants, stated that the only person who in any way interfered with her movements into or out of the meeting was Officer Downing (46a-39-41). Other witnesses declared that although people were entering and leaving the meeting all the time, none of them were in any way ever even inconvenienced by the presence of the defendants (40a-26-36; 43a-42-44a-4; 47a-4-8; 50a-38-53a-9). The defendants remained silent as they sat outside the Council Chamber. Police officers told the defendants that they could leave the building or be arrested. Although the defendants had legitimate business first in their right to attend the public hearing and second to observe what was being done with Defendant Callender, who had been wrongfully ejected. It was on the basis of this testimony that defendants were convicted of violating NJSA (1952) Chap 2A:170-29(2)(b), although they remained silent and peaceful, and although they remained where they were for legitimate reasons. Thus the constitutional rights of the defendants, and the terms of the statute which refers to the obstruction of "... persons lawfully therein," were violated.

POINT I.

THE CONVICTION OF DEFENDANT CALLENDER FOR HIS CONDUCT INSIDE THE COUNCIL CHAMBER WAS AGAINST THE WEIGHT OF THE EVIDENCE AND THE APPLICABLE LAW.

The events leading to defendants' arrests took place at and immediately outside a public meeting of a political body called to discuss a controversial, emotionally charged subject (18a-7-34). The meeting was noisy (48a-39-49a-6). Mr. Callender and many other persons in the audience, differed from Council President Walsh. At the point when the issue considered crucial by opponents of the Fitch Way project was before the Council, the issue of what would happen to the hundreds of poor families to be displaced, Mr. Walsh incurred the ire of the audience by interfering with the testimony of one Bradley (42a-19-42). The record shows that Callender spoke approximately seven words and that Mr. Walsh singled him out for ejection (3a-44-4a-7). In the context, no justification for this ejection existed or was shown at the trial. On the contrary, the Court below did not find that Mr. Callender's speaking was in any way unlawful. So much of the holding of the Court below was unquestionably correct. Mullen v. State, 67 N.J.L.

451 (1906); Payroll Guarantee Association v. Board of Education, 27 Cal. 2d 197 (1945). In the latter case, the Court said (at 213):

> "Speakers who express their opinion freely run the risk of attracting opposition; they cannot expect their opponents to be silenced while they continue to speak freely."

Callender was convicted of creating a disturbance while being dragged from the Chamber without the slightest justification. There is no suggestion in the record that Callender said or did anything while being dragged.

The issue, therefore, is whether a person's ejection from a public meeting can constitute an offense where the person is completely passive while being removed, and where his removal is itself wrongful.

A. The statute does not apply to Callender's conduct.

conduct.

(1). In the context of the meeting, Callender's acts were not punishable.

The noise created by defendant Callender's body as it was dragged out of the room was the basis for convicting him of disturbing the meeting. The crucial element of intention to disturb is consequently totally lacking. In order to establish the offense of disturbing a meeting it must be shown that the acts constituting the offense were intentional. Haywood v. Ryan 185 N.J.L. 116 (1913); Lancaster v. State, 53 Ala. 398, 25 Am. Rep. 625 (1875); State v. Linkhaw, 69 N.C. 214, 12 Am. Rep. 645 (1873); Brown v. State, 46 Ala. 175 (1871). In Garner v. Louisiana, 368 U.S. 167, 82 S.Ct. 248 (1951), Mr. Justice Harlan said (at 204 N.11):

> "It follows, of course, that petitioners' refusal to accede to the request to leave made by police officers could also not constitutionally be punished under the general statute. Were it otherwise, the determination whether certain conduct constitutes a clear and present danger would be delegated to a police officer. Simply by ordering a defendant to cease his protected activity, the officer could turn a continuation of that activity into a breach of the peace." /Emphasis supplied/.

The record shows that Callender was lawfully present at the hearing. The Court below found no fault in his conduct prior to his being dragged out (63a-10-15). It is plain that the New Jersey statute cannot be intended as a device for the silencing of opposition, for the termination of constitutionally protected activities.

(2) The statute involved, NJSA (1952) Chap. 2A:170-28, cannot be construed to make Callender's conduct unlawful.

The places listed in NJSA (1952) Chap. 2A:179-28 ("schools, churches, libraries and reading rooms") are all of a kind in which absolute silence or solemnity is expected and, more, is necessary to orderly functioning. A strict construction of the statute limits the general words ("any place of assembly public or private") to a class of like situations. This meeting, which is not by nature one at which absolute quiet was to be expected, must be excluded from the operation of the statute. Indeed, unless the listing of "schools, churches, libraries and reading rooms" within the body of the statute was for the purpose of limiting the operation of the statute to the class of "silence" situations, the words serve no purpose whatsoever. In other words, only such places of assembly (places of complete silence) which are ejusdem generis, with the places enumerated and the uniform nature of the places enumerated in the statute are regarded as indicating the scope which the Legislature intended the statute to have. In re Armour's Estate, 11 N.J. 257, 94 A. 2d 293 (1953).

A political meeting at which controversial matters are discussed, and at which noise is to be expected is not within the intendment of a statute in which the Legislature has seen fit to enumerate "schools, churches, libraries and reading rooms" as examples of the "places of assembly" protected from "noisy or disorderly conduct." The Legislature would expect such meetings to be "noisy."

This interpretation of the statute reflects the common law history of "disturbing assemblies."

At common law it was a crime to disturb people gathered for religious worship. 4 Blackstone, Commentaries on the Laws of England; Of Public Wrongs, (Beacon Press, 1962) pp. 54, 55. The offense of disturbing a religious meeting had its origin in the policy of removing disabilities first from Protestant dissenters and later Catholics and Jews, and protecting their freedom of religious expression and their right to hold meetings unmolested. Rex v. Wroughton, 3 Burr 1683; 52 Geo. III, C. 155, §12 (1812). The New Jersey statute is one of many American enactments having a similar purpose.

This protection was extended to protect the freedom of assembly of people at benevolent gatherings of other sorts. A statute with such roots cannot be utilized, as here, to repress free expression by permitting the ejection and arrest of opponents for some slight noise.

(3) According to the custom and usage governing political meetings, Callender committed no crime.

In jurisdictions in which the statutes do not contain an enumeration of "quiet situations," the definition of an unlawful disturbance depends in large measure on the character of the meeting and the usage and practice governing such meetings. Commonwealth v. Porter, 1 Gray 476 (Mass. 1820); 2 Wharton, Criminal Law, 674 (Anderson 1957); Jackson v. State, 21 Ga.App. 779, 95 S.E. 302 (Div. 2 1918); State v. Dahlstrom, 90 Minn. 72, 95 N.W. 580 (1903); Gaddis v. State, 105 Neb. 303, 180 N.W. 590, 12 A.L.R. 648 (1871). It has been said, for example, that mere words or acts which, if they happened elsewhere, would not be punishable at all and might even be commendable when occurring in churches, have been punished as:

> "... very great indignities to the Divine Majesty." 2 Russell on Crime 15,25 (Turner 1947).

Thus, for example, to impose the same standards of conduct on mere spectators at a baseball game as would be imposed on users of library facilities would be ludicrous, and to impose a standard of silence on persons attending a political meeting at which controversial issues were discussed and feeling ran high, would violate even the narrowest concept of free speech.

In fact, by this standard, to violate the sanctity of a noisy and excited gathering, a substantial breach of the peace, would be required before punishment could be justified. Commonwealth v. Hoxey, supra. The incidental noise created by the bumping of a limp body as it was dragged out of a room could hardly be called a breach of the peace under any circumstances.

Nor should it be overlooked that Mr. Walsh ordered Callender ejected and arrested without direct warning (3a-37-41) or any serious disturbance (3a-44-4a-5) or time lapse (4a-5-6). Under any construction of the statute this circumstance precludes conviction.

B. NJSA (1952) Chap. 2A:170-28 on its face and as applied is unconstitutional.

The doctrine is well established that:

> "It is our tradition to allow the widest room for discussion /and/ the narrowest range for its restriction, particularly when the right is exercised in conjunction with peaceable assembly." Thomas v. Collins, 323 U.S. 516, 530, 65 S.Ct. 315 (1944).

These words express the general tenor of First Amendment protection particularly in situations of the sort involved here.

(1) The statute is unconstitutional on its face.

NJSA (1952) Chap. 2A:170-28 is unconstitutionally vague because it fails to define adequately the conduct against which it is directed or the places protected. As drawn, the statute could be, and is here sought to be applied to all manner of meetings. Very little conduct fails to annoy or disturb someone. In this record, there is no proof that anyone was in fact disturbed in any substantial or significant way. The statute deals equally with conduct clearly de minimis and with total disruption. Such a statute cannot stand, even passing the point that it invades the protected precincts of the First Amendment.

Far more narrowly drawn statutes than that of New Jersey have, in fact, been found unconstitutional infringements on the rights of demonstrators in situations in which far more noise and disturbance has been created than in the present case. Edwards v. South Carolina, 372 U.S. 229, 83 S. Ct. 680 (1962); Henry v. Rock Hill, 376 U.S. 776, 84 S. Ct. 1042 (1964); Fields v. South Carolina, 375 U.S. 44, 84 S.Ct. 149 (1964); Cox v. Louisiana, -- U.S. --, 85 S.Ct. 453 (1965).

In fact, these cases have held that the failure of a "disorderly conduct" statute to have a breach of the peace limitation, that is, a standard which reconciles the restriction on conduct with the protection of the First Amendment, renders the statute unconstitutionally vague. Cox v. Louisiana, supra.

(2) The statute is unconstitutional as applied.

Callender's very presence at the meeting was in furtherance of a legitimate goal. Thornhill v. Alabama, 310 U.S. 88, 60 S.Ct. 736 (1939); Sinn v. Tile Layers' Protective Union, 301 U.S. 468, 57 S.Ct. 857 (1937); Edwards, supra; Fields, supra; Henry, supra; Cox, supra. The meeting was public and he chose to attend. He had the right to speak and the right to hear. Walsh could not capriciously deny Callender the right to attend. As here applied, the statute is a tool by which public authority can silence opponents. Callender was singled out by Walsh who did not eject the many others who made far more noise than Callender. So to utilize the statute, without uniform standards of conduct or application, is plainly unconstitutional. Garner v. Louisiana, supra; Cantwell v. Connecticut, 310 U.S. 296, 60 S. Ct. 900 (1940).

POINT II.

THE CONVICTION OF THE DEFENDANTS UNDER NJSA (1952) CHAP. 2A:170-29 (2) (b) FOR CONDUCT OUTSIDE THE COUNCIL CHAMBER WAS AGAINST THE WEIGHT OF THE EVIDENCE AND THE APPLICABLE LAW.

A. Conviction of defendant Callender for remaining where the police placed him cannot be sustained.

After Callender was dragged from the Chamber, he was placed in the corridor outside. When he arose in order to depart, he was instructed by a policeman to remain where he was. (38a-34-36) Some testimony indicates that the policeman pushed Callender back into a seated position. (38a-34-36). Thereafter, according to police testimony, he remained where he had been instructed to remain until the police removed him from the building. (20a-10-12). This is the record on which Callender was convicted. No legal argument can deal adequately or seriously with the conviction of a person for "obstructing" a place which he occupied against his own wishes at the direction and under the supervision of police officers in whose custody he then was. See Cox v Louisiana, *supra*.

B. The conviction of the other defendants was against the weight of the evidence and the applicable law.

(1.) There is no credible evidence that defendants "obstructed" a public place within the meaning of the statute.

The statute specifically defines the offense as obstructing a place so as to inconvenience any person. No proof meeting the statutory standard was offered.

The record shows that one, and only one, person even claims to have been inconvenienced, but there is no showing that he was intentionally obstructed. Mr. Maziarz never asked anyone to get out of his way, and he was able to get past the defendants. Mr. Maziarz's testimony is, incidentally, entirely uncorroborated. The people's witnesses did not see the incident and defendants do not recall seeing Mr. Maziarz at any time.

The record shows that no other person who sought to enter or leave the Council Chamber during the time defendants were in the passage was obstructed or annoyed. There was ample testimony that many persons entered and left the Chamber without difficulty during the relevant time. The record also shows that others were in the passage.

Further, defendants had every right to be in the passage, both as persons interested in the Council hearings and as friends of Callender, who was being detained there.

Even after the defendants had sat down outside the Council Chamber they (except Mr. Callender) were told that they could leave. (60a-13-8). Since it was deemed by police that their conduct prior to this point was not worthy of arrest, and since there is no indication in the record that they subsequently behaved differently, it appears that there was no basis for their arrest or their conviction. Furthermore, the order that defendants leave the building violated their right to remain.

The offense charged requires an intent. The conduct of the defendants furnishes no basis for an inference of intent to obstruct anyone. On the contrary, their conduct is consistent with the intent lawfully to excercise their rights. In the absence of facts from which the guilty intent can be inferred, the conviction is not to be sustained.

In all of the above respects, the state failed to prove the guilt of the defendants beyond a reasonable doubt.

Although the New Jersey disorderly persons statutes are "quasi-criminal", the

> "rules of the criminal law are applicable to prosecutions under the disorderly persons law." O'Regan & Schlosser, Criminal Laws of New Jersey, Vol. 2, §1787. State v. Labato, 7 N.J. 137 (1951); State v. Rodgers, 91 N.J.L. 212 (E. & A. 1917).

Disorderly person prosecutions involving more than one person can not be "jointly" conducted where the offenses are "several and distinct." In Handlin v. State, 16 N.J.L. 96 (1837), a conviction under § 170:28 for disturbing an assembly was overturned for this reason. In the Handlin case, a joint summons and complaint was used, joint offenses were charged, and the defendants were jointly convicted. In the present case, too, proof of "obstruction or interference" against each defendant, is required, and there was not even the attempt to bring it forward. No general showing that defendants were a group of some of whom may have formed an obstruction would be sufficient. None of the witnesses at the trial, however, were able to authoritatively identify which defendants obstructed the entrance to the City Council Chamber (4a-24-29; 10a-15-18; 10a-31-34; 19a-42-49; 29a-12-19) and the Court made no effort to examine the manner in which each defendant contributed, separately and distinctly, if at all, to the obstruction.

(2) The statute, properly construed, cannot be applied to defendant's conduct.

The only person who in any way claimed to have been impeded by the presence of the defendants outside the Council Chamber was Mr. Maziarz, and he only claimed to have been delayed for "less than a minute" (10a-35-37). Furthermore, there is no indication that he asked anyone who might in any way have been blocking him to move out of his way.

This means that no person was in any way interfered with beyond the mere inconveniencing of Mr. Maziarz. The statute should not take cognizance of mere "inconveniencies." People v. Nixon, 248 N.Y. 182, 161 N.E. 463 (1928). Thus only such obstructions which constitute disorderly conduct are punishable. In the Nixon case, supra, the New York Court of Appeals noted that:

> "Men and women constantly congregate or walk upon the streets in groups, quite oblivious

> to the fact that to some degree they are thereby causing inconvenience to others using the street."

Such "obstructions" are not cognizable by the Court, because, they do not constitute disorderly conduct or breach of the peace.

Even in cases in which there was a real obstruction by active conduct as in the Nixon case where the defendants were arrested for marching along the street four abreast and pedestrians were "just barely getting through," there was no disorderly conduct and no breach of the peace and hence, no punishable act. Breach of the peace has been defined as a:

> "...disturbance of public order by an act of violence or by any act likely to produce violence, or which by causing consternation and alarm disturbs the peace and quiet of the community." Cantwell v. Connecticut, supra, at 308.

When charged with disorderly conduct:

> "...the defendant may...raise any defense which negates the existence of any of the elements of the offense of breach of the peace." Wharton's Criminal Law, supra, at 663.

Thus only an act which "obstructs or interferes" to the extent of creating a breach of the peace may be punished under NJSA (1952) Chap. 2A:170-29(2)(b).

(3) The statute is unconstitutional on its face and as applied.

A failure to limit the statute to breaches of the peace would render it unconstitutional on its face. Edwards v. South Carolina, supra; Fields v. South Carolina,supra; Henry v. Rock Hill, supra; Cox v. Louisiana, supra; Cantwell v. Connecticut, supra. The statute is in any case far less precise than others found to be unconstitutionally vague.

In Cox v. Louisiana, supra, the Supreme Court recognized that the street was completely blocked by the demonstrators, but nonetheless overturned the convictions. The Louisiana statute is remarkably similar to § 170:29(2)(b) involved in this case:

> "Obstructing Public Passages. No person shall wilfully obstruct the free, convenient and normal use of any public sidewalk, street, highway, bridge, alley, road or other passageway, or the entrance corridor or passage of any public building.../etc./ by impeding, hindering, stifling, retarding or restraining traffic or passage thereon or therein."

As in this case, the defendants in the Cox case intended to petition for a redress of grievances. It was not the purpose of either the defendants in Cox, or here to obstruct traffic. As regards the purpose of the demonstrators in the Cox case, the Court said:

> "In upholding appellant's conviction under this statute, the Louisiana Supreme Court thus construed the statute so as to apply to public assemblies which do not have as their specific purpose the obstruction of traffic. There is no doubt from the record in this case that this far sidewalk was obstructed, and thus, as so construed, appellant violated the statute."

The unbridled discretion of police officers and their application of such broad statutes to conduct such as that of the defendants in the present case was analyzed by the court:

> "The pervasive restraint on freedom of discussion by the practice of the authorities under the statute is not any less effective than a statute expressly permitting such selective enforcement." Cox v. Louisiana, supra, at 466.

Thus the Louisiana statute was held to be unconstitutional on its face.

In State v. Furino, 85 N.J. Super. 345 (1964), the defendant was convicted for obstructing a police officer by the use of physical force. In that case a breach of the peace was apparent.

The statute is in any event unconstitutional as applied. In the present case, no breach of the peace was even remotely suggested. The defendants committed no act from which an inference of an intent to obstruct or breach the peace could properly be drawn. Thus, the conduct of the defendants was constitutionally protected. Application of any statute, clearly drawn, to make their conduct unlawful would violate their right to petition, freedom of assembly, and freedom of speech. As stated in the Edwards case, supra, (at 236), defendants' peaceful conduct is:

> "...protected against censorship or punishment unless shown likely to produce a clear and present danger of a substantive evil that rises far above public inconvenience, annoyance or unrest." (Emphasis supplied).

The conduct of the public authorities in this case was designed to silence persons known to oppose the John Fitch Way project. The utilization of a statute designed to preserve free expression and good public order for the purpose of denying to any person his constitutional rights cannot have the approval of this Court. The preservation of law and order demands that first and always the guardians of the law obey it. Here the law has been abused by its official defenders: the persons protected by the law have been oppressed. To sustain that oppression is neither palpable nor possible.

CONCLUSION

Wherefore, it is respectfully submitted that the judgment of the Hon. J. Wilson Noden, Judge of the Mercer County Court, Law Division-Criminal, convicting Herbert E. Callender of violating NJSA (1952) Chap. 2A:170-28 and Louis S. Smith, Herbert E. Callender, Marva L. Amis, Lily R. Lewis, Willard D. Crittendon, and Joyce L. Schurik, of violating NJSA (1952) Chap. 2A:170-29(2)(b) be reversed.

Respectfully submitted,

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SUPRA or SUPRA? [illegible]

Point I Examination of the nature of §170:28, ~~of~~ the political nature of the meeting, with its controversial subject matter, and of the "conduct" of defendant Callender, leads to the conclusion that the statute should not apply.

The New Jersey statute prohibiting the disturbing of assemblies~~,~~ resulted from the merger of several older statutes. The original provision which protected religious meetings (first codified as Chapter 2:210) was combined in 1951 with other measures protecting the peace of "libraries or reading rooms" (Chapter 2:202-11) and "school property" (Chapter 2:202-12).

Under early common law it was a crime to disturb people gathered for religious worship. ~~for~~ Blackstone, Commentaries on the Laws of England, Vol. IV of Public Wrongs, (Beacon Press, 1962, pp. 54, 55). The offense of disturbing a religious meeting had its origin in the policy of removing disabilities first from Protestant dissenters and later from Catholics and Jews, and protecting their freedom of religious expression and their right to hold meetings unmolested. Rex. v. Wroughton, 3 Burr 1683; 52 Geo. III 1812 CH 155§12. It was also a misdemeanor at early common law to wantonly disturb an assemblage of persons met together for any lawful purpose. Campbell v. Commonwealth, 59 Pa. 266 (1868), Commonwealth v. Hoxey, ← 16 Mass. 385 (1820). This common law misdemeanor was seldom used, however, because when a disturbance occurred that was sufficient to merit prosecution, it was usually tried as a breach of the peace, Burdick, Law of Crimes, Vol. 3 (1946) §766, P 129. American statutes, including that of New Jersey, generally were at first aimed solely at the protection of religious meetings. Most of these have been extended to shield all meetings from willful or tumultuous conduct of persons attempting to make a ? → disturbance,[2] Wharton's Criminal Law & Procedure (Anderson, 1957) §813.

A. THIS STATUTE SHOULD BE NARROWLY CONSTRUED.

Disorderly conduct is an offense unknown to the common law. In re Garofone, 80 NJ Super Law 259 (1963); ← State v. Labato, 7 NJ 137 (1951). Both as to the nature ← of the meeting protected, and the nature of the conduct involved, a narrow interpretation of the statute is called for, State v. Klapprott, 127 NJL 395, ~~22A2d 877~~ (1941). ←

This view is fortified by the fact that another statute, §170-29(1), provides sanctions against

> "...loud and offensive or profane or indecent language in any...public place."

In fact a reading of Chap. 2A:170-29(1) and the cases which have arisen thereunder, compared with the narrow range and small number of cases which have arisen under §170-28, gives the impression that it was an error to indict Callender under §170-28 at all. See Mullen v. State, 67 ~~N.J. L~~ NJL 451 (~~1902~~ 1906) in which defendant was prosecuted under §170-29(1) for loud language at an election meeting in a school house. ←

B. POLITICAL MEETINGS AT WHICH NOISE IS TO BE EXPECTED, ARE NOT WITHIN THE SCOPE OF CHAP. 2A:170-28.

In Hughes v. City of East Orange, 29 N.J.L.J. 343 ← (1906), the defendant was charged with disturbing a meeting of a congregation in its church while church business was being discussed. The court found that the meeting was not a religious function, but a business meeting, and thus not within the protection of the statute.

The statute dealt only with religious assemblies, but the case involves a strict construction of the statute and indicates recognition of the view expressed above that statutes of this sort must be strictly construed.

Furthermore the case supports the view that the orientation of the places listed in the present statute ("schools, churches, libraries and reading rooms") is toward situations in which absolute silence or solemnity is expected, and a strict construction of the statute might limit the general words ("any place of assembly public or private") to like situations, thereby excluding this meeting which is not by nature one at which quiet was to be expected, from the operation of the statute. In other words only such places of assembly (places of complete silence) which are "ejusdem generis", with the places enumerated and the uniform nature of the places enumerated in the statute are regarded as indicating the scope which the Legislature intended the statute to have.

A political meeting at which controversial matters are discussed, and at which noise is to be expected is not within the intendment of a statute in which the Legislature has seen fit to enumerate "schools, churches, libraries and reading rooms" as examples of the "places of assembly" protected from "noisy or dis~~s~~orderly conduct."

C. DEFENDANT CALLENDER'S WORDS AND PASSIVE ROLE WERE NOT, IN ANY CASE, OF SUCH A NATURE AS TO BE PUNISHABLE IN VIEW OF MEETINGS OF THE SORT INVOLVED HERE.

In other jurisdictions, in which the statutes do not contain an enumeration of "quiet situations" and at common law, where no such limitation existed, the courts have attempted to distinguish between those words or acts which constitute an unlawful disturbance and those which are protected speech. This depends in large measure on the character of the meeting and the usage and practice governing such meetings. Commonwealth v. Porter, 1 Gray (Mass.) 476. (1820); 2 Wharton Supra at P. 674; Jackson v. State, 21 Ga. App 779, 95 SE 302 (Ct App Div 2 1918); State v. Dahlstrom, 90 Minn. 72, 95 N.W. 580 (1903); Gaddis v. State, 105 Neb. 303, 180 NW 590, 12 ALR 648 (1920). It has been said, for example, that mere words or acts which if they happened elsewhere, would not be punishable at all and might even be commendable occurring in churches have been punished as:

> "...very great indignities to the Divine Majesty." *Russell on Crime* (Turner), v. 2, pp. 15, 25.

Thus to impose the same standards of conduct on mere spectators at a baseball game as would be imposed on users of library facilities would be ludicrous, and to impose a standard of silence on persons attending a political meeting at which controversial issues were discussed and feelings ran high, would violate even the narrowest concept of free speech.

Furthermore, to constitute an unlawful disturbance the act must be inconsistent with the legitimate purpose of the assemblage, and even if the act is willful, it will not constitute an offense if it is done in the reasonable exercise of a right. Wharton Supra at p. 676. Thus, singing hymns in a disturbing way was not a disturbance of a religious assembly (*State* v. *Linkhow*, 69 NCar 214 12 Am. Rep. 645 (1873); nor was repelling or denying statements by the speaker assailing defendant's character (*Lovett* v. *State*, 31 Okl. Crim. Rep. 378 Crim. Ct. of App 239 P. 274 Okla., 1925); nor was the interruption of a speaker to contradict his views (*Gaddis* v. *State*, ~~180 NW 590 (Neb., 1920)~~ SUPRA; nor was the showing of disapproval of entertainment by reasonable demonstrations such as hissing and booing (12 ALR 650, 656 et seq); nor stamping, shouting and a "religious harangue" outside the South Carolina House of Assembly (Edwards v. South Carolina, 372 U.S. 229, 83 S.Ct. 680 (1962).

On the other hand, rude and profane disturbances of solemn functions (State v. Wright, 41 Ark 410, 48 Am. Rep 43 (1883)) or even giggling and talking during a church service (Handlin v. State, 16 N.J.L. 96 (1837) have been held to be disturbances under such statutes.

A case which should be dispositive of the issues in the present case is Mullen v. State of New Jersey, Supra. In this case the defendant was accused of making "loud and offensive" comments and remarks to persons present at a special election of voters in the Neptune City school house. He was convicted of disorderly conduct under §3 of the act concerning disorderly persons (Pamp. L. 1898 p. 343), an act in the nature of chapter 2A:170-29(1). After saying that the evidence showed only that the defendant's language was loud but not indecent (as required by the statute) the court said: (at 453)

> *"If all who are loud and persistent in soliciting support for their candidates or views at public elections or school meetings are to be held disorderly persons, it will lead to a new view as to who are disorderly persons."* (Emphasis supplied)

The meeting, in the present case was a public gathering called to discuss certain controversial issues. (D a?) Without a doubt the "custom and usage" relating to such meetings envisions a broad standard of acceptable conduct. Indeed, the California Supreme Court through Traynor, J., has declared regarding meetings of exactly this sort, that:

> "Speakers who express their opinions freely must run the risk of attracting opposition; they cannot expect their opponents to be silenced while they continue to speak freely." *Payroll Guarantee Association* v. *Board of Education*, 27 Cal 2d, ~~117~~ 213 (1945).

By these standards, the 5 words spoken by Callender at the Council meeting (D a)? could not reasonably be said to violate the statute.

Indeed, in the case at hand, Herbert Callender was convicted for the disturbance which he is said to have created *after* the President of the City Council ordered that he be removed (D a). Furthermore, the Hon. Judge was not sufficiently satisfie~~l~~d that the defendant Crittendon had linked arms with Callender to prevent his removal or refused to let go if they did link arms, and so he acquitted Crittendon of the charge of disturbing assemblies. Certainly, if Crittendon's conduct was blameless, so much of Callender's conduct as is concerned with the supposed "linking-arms" episode should also be blame-free. This leaves only the noise created when Callender was involuntarily dragged from the Council Chamber.

It has frequently been said that in order to establish the offense of disturbing a meeting it must be shown that the acts constituting the offense were intentional. Lancaster v. State, 53 Ala. 398, 25 Am Rep 625 (1875); State v. Linkhaw, SUPRA ~~69 N.C. 214, 12 Am Rep 645 ( )~~; Brown v. State, 46 Ala. 175 (1871). Although not stated per se, intent is an element of offenses under the Disorderly Persons Act. Haywood v. Ryan, 85 N.J. L 116 (1913).

In Brown v. State, Supra, the defendant lay down on a bench in a church. The bench creaked whenever he moved. In reversing the conviction the court held that the defendant was guilty of no willful disturbance.

POINT II IF THE STATUTE IS REGARDED AS BEING SUFFICIENTLY BROAD TO ENCOMPASS CALLENDER'S CONDUCT IT INFRINGES UPON CALLENDER'S FREEDOM OF SPEECH, & HIS RIGHT TO PETITION.

Even if the Court should determine that the statute is broader than has been claimed above, and that Callender's remarks and passivity fall within its scope, his conduct would nonetheless be protected by the First Amendment. The Supreme Court has often restated the doctrine that

> "It is in our tradition to allow the widest room for discussion (and) the narrowest range for its restriction, particularly when the right is exercised in conjunction with peaceable assembly." (Thomas v. Collins, 323 U.S. ←
> 516 at 530), 65 S.Ct. 315 (1944)

These words express the general tenor of First Amendment protection particularly in situations of this sort.

There are, of course, limitations on the nature of protected speech: Incitement to riot as in **Feiner** v. **New York**, 340 U.S. 315, 71 S. Ct. 303 (1951); "fighting words" as in **Chaplinsky** v. **New Hampshire**, 315 U.S. 568, 62 S. Ct. 766 (1941); and obscenities and indecencies are not within the scope of constitutionally protected liberties. Yet, on the whole, "...Any attempt to restrict these liberties must be justified by clear public interest, threatened not doubtfully or remotely, but by clear and present danger." **Thomas** v. **Collins**, **supra**, at 530. A mere annoyance is not enough. **Thornhill** v. **Alabama**, 310 U.S. 88, 60 S. Ct. 736 (1939). **Giboney** v. **Empire**, 336 U.S. 490 at 501, 502, 69 S. Ct. 685 (1949). **People** v. **Carcel**, 3 N.Y. 2d, 327, Carcel, 3 NY 2d 327, 165 NY Supp 2d 113, 144 NE 2d 81, 65 AL2d 1145, (1957). Even if Callender's words or his failure to removed himself from the meeting:

> "stirred people to anger, invited public dispute, or brought about a condition of unrest. A conviction resting on any of these grounds may not stand." **Terminiello** v. **Chicago**, 337 U.S. 1 at 5, 69 S. Ct. 894 (1949)

Indeed if "doing nothing" is punishable as "disturbing the meeting," the statute becomes unconstitutionally vague because it provides no reasonable standard of guilt. **State** v. **Caez**, 81 N.J. Super 315 (AD 1963) ~~(1963).~~

In addition, the purpose of Callender's very presence at the meeting was in furtherance of a legitimate goal. Thornhill v. Alabama, supra at 102 ~~88 at 102,~~ Sinn v. Tile Layers' Protective Union 301 U.S. 468, 478, 57 S.Ct. 857, (1937), ~~supra~~, and other labor cases emphasize the significance of a legitimate goal in upholding or rejecting a particular form of expression. Furthermore, as in Edwards v. South Carolina supra, Fields v. South Carolina, 375 U.S. 44 , 84 SCt 149 (1964), Henry v. Rockhill, 376 U.S 776 , 84 SCt 1042 (1964), and Cantwell v. Connecticut, 310 U.S. 296, 60 S.Ct. 900 (1940), ~~supra~~, his means of achieving that goal were through protected freedom of speech.

POINT 3. PROPERLY CONSTRUED, THE STATUTE SHOULD NOT COVER THE PEACEFUL PROTEST OF THESE DEFENDANTS.

Determination of the scope of the statute depends not only on a determination of the words "obstructs, molests or interferes", but also on a proper definition of "disorderly conduct". This is so because, not every obstruction could be punishable. *People* v. *Nixon*, 248 NY 182, 161 N.E. 463 (1928). Thus only such obstructions which constitute disorderly conduct are punishable. The term "disorderly person", therefore, gives breadth to the statute. An analysis of these crucial terms follows:

(a) Disorderly Conduct.

Disorderly conduct is not an offense known to the common law, and can therefore exist only because of a statute so providing. *State* v. *Labato*, *supra*; *In re Garofone*, *supra*.

Statutes which are in derogation of the common law, particularly those which are penal in nature, must be strictly construed. State v. Klapprott, SUPRA ~~27 NJL 395, 22A 2d 877 ( )~~. Unfortunately, the New Jersey cases arising under section 170:29 are few and most of the opinions are narrow holdings on narrow fact patterns shedding little light on on the meaning of "disorderly conduct". See State v. Burkitt, 120 NJL 393 (1938); State v. O'Donnell, ~~200 A. 739~~ 120 NJL 393 ~~(SupCt,~~ (1938); Central Railroad Co. v. Simandl, 124 NJ Eq 207 (Ct of Chancery, 1938); State v. Furino, 85 NJ Super 345, ~~204A 2d 718~~ (1964). Some of the cases do, however, give some indication of the meaning of the term by refusing to apply the statute in certain situations, although none of them make an effort to authoritatively interpret disorderly conduct. These cases generally lend weight to the view that a narrow interpretation of the statute is called for. Thus, where the defendant was accused of using "loud and offensive" language, the court found that merely loud language was not enough and said that if merely loud language were criminal, it would broaden the meaning of disorderly conduct. State v. Mullen, ~~67 NJL 343~~ SUPRA (451) ~~(1906)~~. In Ruthenbeck v. First Criminal Judicial & c., 7 Misc 969 ~~NJ Sup Ct~~ (1929), the defendant was convicted under section 3 of the Disorderly Persons Act for calling a police officer a "big muttonhead". The Court in declaring that this did not quality as "loud and offensive" language, said:

> "It is not every trivial epithet addressed by one person to another, even in the office of the clerk of the recorder's court and to a police officer doing desk duty there, that constitutes disorderly conduct."

In the case of Haywood v. Ryan, ~~85 NJL 116 (1913)~~ SUPRA the defendant was convicted of "obstructing or interfering" with traffic on a city street. He was being followed by a large crowd which completely blocked other pedestrians. The Court, in giving the statute a narrow interpretation, said that the provision was not intended to apply to those unintentionally blocking the street and that mere notoriety could not make one a disorderly person. Thus although the pedestrians were definitely obstructed, the defendant was not a disorderly person, and so he did not violate the statute.

In New York the statute enumerating acts which constitute disorderly conduct (§ 722 of the New York Penal Law; including subd. 2: "obstructing, interfering, (etc.) ... in a public place") describes the nature of such offenses as constituting or tending toward a "breach of the peace". The New York Court of Appeals said that in interpreting disorderly conduct offenses, the common law definition of breach of peace, "though not controlling is helpful in ascertaining the nature of the acts proscribed by the statute." People v. Carcel, ~~3 NY2d 327 (1957)~~ supra; People v. Most, 171 NY 423, 64 NE 175, 58 LRA 509, (1902). ~~429~~. In the Carcel case the New York Court of Appeals, citing People v. Most, supra, and Cantwell v. Connecticut, ~~310 US 296, 308,~~ supra defined breach of the peace as a

> "disturbance of public order by an act of violence or by any act likely to produce violence, or which by causing consternation and alarm disturbs the peace and quiet of the community."

The New York disorderly conduct statute (Penal Law, § 722), as stated above, includes the limiting "breach of the peace" terminology in its opening paragraph. The New Jersey statute does not. Other states, however, which, like New Jersey, have statutes which lack a "breach of the peace" limitation, have, through judicial interpretation decided that only such acts are punishable:

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> "... as actually tend to disturb the public peace and quiet." State v. Robinson, 28 Conn Supp 430, 184 A 2d 188, 97 ALR 2d 500 (1962). State v. Gist, 237 SC 262, 116 SE 2d 856 (1960). The Robinson case, supra, actually cites New York cases to this effect (People v. Mounier, 280 NY 77, 19 NE 2d 789 (1939).

Moreover, it has often been said that due to the similarity of disorderly conduct and common law breach of the peace:

> "... the defendant may ... raise any defense which negates the existence of any of the elements of the offense of breach of the peace." Whatton's Criminal Law, supra, at 663.

Thus, only an act which "obstructs or interferes with any person" to the extent of creating a breach of the peace should be punishable under § 170:29(2)(6). As illustrated above, several states have limited the operation of statutes against "obstructing or interfering" to breach of the peace situations. New Jersey has not. State v. Caex, SUPRA ~~81 NJ Super 315 (AD 1963)~~; State v. Furino SUPRA ~~85 NJ Super 345, 204 A 2d 718 (1964)~~. A failure to do so places no minimum standard on what "obstructions" are punishable and serious "due process" and "free speech" problems arise.

(b) Obstructing or Interfering.

"Guided by this definition [of breach of peace] the courts have indicated that something more than a mere inconveniencing of pedestrians is required to support a convection [for obstructing or interfering]." People v. Carcel, supra.

In People v. Nixon, ~~248 NY 182~~, SUPRA at 187-188, the Court took note of the fact that "men and women constantly congregate or walk upon the streets in groups, quite oblivious to the fact that to some degree they are thereby causing inconvenience to others using the street." In the Nixon case, the conduct determined not to be sufficiently "obstructive or interfering" was a parade in which defendants were marching four abreast and pedestrians were "just barely getting through." Yet, though defendants were certainly obstructing others, there was no breach of the peace, and hence no criminal conduct under the statute. It may be said as well of the defendants in the present case that they committed no "breach of the peace" and that they were certainly not "disorderly." Their peaceful action caused neither "violence," nor "the threat of violence," nor "alarm" nor a disturbance of the "peace and quiet of the community," nor, for that matter, did their action cause anything more than in "inconvenience." It is even doubtful from the record that anyone (with the possible exception of Mr. Maziarz, the Clerk of the Council) was so much as inconvenienced by the "sit-down."

In State v. Furino, supra, the Appellate Division of the Superior Court upheld a conviction under § 170:29 (2)(b) where, the defendant was accused of interfering with the arrest of another by the use of physical force against the arresting officers. The present case can and should be distinguished from Furino. Here, the defendants behaved peacefully. Furthermore, it was the purpose of these defendants to petition for a redress of grievances (D A). Unlike Furino, it was not their purpose to obstruct, although that may have been an incidental result. Cox v. Louisiana, 85 S.Ct. 453 (1965) ~~supra~~. The Cour~~s~~t in the Furino case said that the three verbs "obstruct, molest and interfere" are:

> "... definite, clear and distinct, readily understood and employed in the every day speech of the man on the street... .
> 'obstruct' means to object or come in the way of; to hinder from action; to impede.
> 'molest' means to interfere with or meddle with unwarrantably. And 'interfere' is defined as to enter into or take part in the concern of others; to intermeddle; intervene. Webster's New International Dictionary (2d Edition 1948);
> 3 Wharton's Criminal Law (Anderson Ed. 1957)
> § 1284 p. 634."

Although the words "obstruct, molest and interfere" and their definitions, cited above, may clearly have divined criminal conduct when applied to the facts in the Furino case, if literally, uniformly and blindly applied, they would punish completely innocuous conduct (such as the examples set forth in the Nixon case, supra) or other, more purposeful deeds which though they produce incidental "obstruction, molestation or interference" are, nonetheless, constitutionally protected as a "peaceful expression of unpopular views," Edwards V. South Carolina, supra; Fields v. South Carolina, supra; Henry v. Rock Mill, supra, Cox v. Louisiana, supra, Cantwell v. Connecticut, supra, (see Point 4 which follows).

That this danger is real is illustrated by State v. Guillotte, 10 NJ Super 502 (Essex Cty. ~~Ct.~~ -Law Div 1950) (~~1951~~), in which the Essex County Court found that one person who was moving about while distributing leaflets on a busy street corner was guilty of obstructing and interfering with pedestrians under the provisions of section 202-7. The case is unreasonable in the breadth which it gives to the terms of the statute. On constitutional grounds, the case is nothing more than a "sport." Compare, in particular, Cantwell v. Connecticut, supra.

In conclusion, to constitute punishable "obstruction, molestation or interference", the conduct should be more than a mere annoyance before it is allowed to fit within the terms of the Act. It should, in fact, constitute so substantial a blockage as to be a "disturbance of the peace" as defined above. As to the conduct of the defendants in the present cases, it seems fair to say that if they had merely stood together in a group, no one would even have noticed them, though sitting down they became the objects of attention and arrest. This is so in spite of the fact that seated, they were hardly more of an obstruction than they would have been had they remained standing. The "sit-down", moreover, was by all accounts silent, non-violent, and, but for the possible exception of Mr. Maziarz, non-obstructive. As wrongdoing, it does not rise above the level of bad manners, which no legislature has seen fit (or could) to make criminal.

(c) The Defendants were Present in the Building

Lawfully and for a valid purpose, the defendants in this case were arrested in a place in which they had a right to be. The hall in which the Council meeting was held was a public place and it was open to the public at the time. Furthermore, the defendants' purpose in entering and remaining in the building was not only consistent with the use of the building but also for the purpose of exercising their constitutional rights. The defendants' purpose was the "peaceful expression of unpopular views," and the desire to petition for a redress of grievances. In fact, they were in a position similar in many respects to that of the defendants in the *Edwards* case. In *Edwards*, the defendants were on the state house grounds for the purpose of holding a peaceful demonstration and to petition the legislature. They were, like the defendants in the instant case, in a public place outside a public meeting, for an identical purpose. In *Henry v. Rock Hill*, *supra*, the facts are also similar. In fact, in the *Henry* case, the demonstration produced so much noise that the Council meeting going on inside was actually interfered with. *Fields* v. *South Carolina* and *Cox* v. *Louisiana*, *supra*, are to the same effect.

[D-a]

In many other cases, the rights of citizens to demonstrate peacefully in public places, has been upheld: *People* v. *Remsen*, 63 NYS 2d 860, 188 NY Misc 21 (Magistrates Ct Queens Cty 1946) (inside municipally owned airport); Taylor v. Louisiana, 370 US 154 82 SCt 1188 (1962) (interstate bus waiting room).

POINT 4. EACH FACTOR OF THE OFFENSE MUST BE PROVED SEPARATELY AGAINST EACH DEFENDANT.

Although the New Jersey disorderly persons statutes are "quasi-criminal", the "rules of the criminal law are applicable to prosecutions under the disorderly persons law." O'Regan & Schlesser, Criminal Laws of New Jersey, vol. 2, section 1787. State v. Labato, SUPRA ~~7 NJ 137 (1951)~~; State v. Rodgers 91 NJL 212 (E. & A. 1917).

Disorderly conduct prosecutions involving more than one person can not be "jointly" conducted where the offenses are "several and distinct". In Handlin v. State, 16 SUPRA ~~NJL 96~~ ~~(1837)~~, a conviction under § 170:28 for disturbing an assembly was overturned for this reason. In the Handlin case, a joint summons and complaint was used, joint offenses were charged, and the defendants were jointly convicted. In the present case, too, proof of "obstruction or interference" again each defendant, should be required. It must be shown that each defendant could actually be identified as an "obstructor" and how, if at all, each defendant obstructed. No general showing that defendants were a group some of whom may have formed an obstruction would be sufficient. None of the witnesses at the trial, however, were able to authoritatively identify which defendants obstructed the entrance to the City Council Camber (D. ____ A.) and the Court made no effort to examine the manner in which each defendant contributed, separately and distinctly, to the obstruction, if at all (D. ____ A.).

POINT 5. THE ARREST OF THESE DEFENDANTS UNDER § 170:29 (2)(b) VIOLATED THE FIRST AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

Points 3 & 4 dealt with the reasons why § 170:29 (2)(b) should not apply to the defendants herein. This point and Point 6 will probide arguments leading to the conclusion that the statute may not constitutionally be applied to the conduct of these defendants. ~~65 S.Ct 315 (1944)~~

In Thomas v. Collins, ~~323 US 516~~ SUPRA, at 537, Mr Justice Rutledge clearly expressed the fact that

> "It is ... in our tradition to allow the widest room for discussion, /and/ the narrowest range for its restriction, particularly when the right

> is exercised in conjunction with peaceable assembly."

Although the right to freedom of speech is not unlimited, it is:

> "... protected again censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evel that rises far above public inconvenience, annoyance or unrest." Edwards v. South Carolina, supra at 236.

The nature and extent of the powers of the state to impose limitations has been clarified in recent years. The state may, among other things, not pertinent here, make reasonable traffic regulations. Cox v. New Hampshire, 312 US 569, 61 SCt 762 (1940). It could prevent persons from forming " a cordon acress the street" and allow "no pedestrian to pass who did not accept a tendered leaflet." Schneider v. Irvington, 308 US 147, 160, 60 SCt 146 (1939) ~~supra at 160~~. But a state could not under a general statute which in its terms could include even the most harmless conduct, prevent incidental obstructions arising from the "peaceful expression of unpopular views." This is most clear in cases in which the extent of physical obstruction is not great, as in Cantwell v. Connecticut, supra, where the objectionable act is committed by one person. But it is also clear that greater obstructions resulting from huge demonstrations are also allowed constitutional protection. Field v. South Carolina, supra; Henry v. Rock Hill, supra; Cox v. Louisiana, supra. In all 3 cases the demonstrators' presence forced pedestrians off the sidewalk. In the Henry case, the demonstrators sang so loudly that all work in the City Hall was not only interfered with, but ~~also~~ completely disrupted. In Cox v. Louisiana, supra, the Supreme Court recognized that the street was completely blocked by the demonstrators, but nonetheless overturned the convictions. The Louisiana statute is remarkably similar to § 170:29 (2)(b) involved in this case:

> "Obstructing Public Passages.
> No person shall wilfully obstruct the free, convenient and normal use of any public sidewalk, street, highway, bridge, alley, road or other passageway, or the entrance corridor or passage of any public building.../etc./ by impeding, hindering, stifling, retarding or restraining traffic or passage thereon or therein."

As in this case, the defendants in the Cox case intended ~~to petit~~ to petition for a redress of grievances. It was not the purpose of either the defendants in Cox, or here (D.____A.) to obstruct traffic. As regards the purpose

of the demonstrators in the Cox case, the Court said:

> "In upholding appellant/s conviction under this statute, the Louisiana Supreme Court thus construed the statute so as to apply to public assemblies which do not have as their specific purpose the obstruction of traffic. There is no doubt from the record in this case that this far sidewalk was obstructed, and thus, as so construed, appellant violated the statute."

The unbridled discretion of police officers and their application os such broad statutes to conduct such as that of the defendants in the present case was analyzed by the court:

> " "The pervasive restr~~iant~~aint on freedom of discussion by the practice of the authorities under the statute is not any less effective than a statute expressly permitting such selective enforcement." Cox v. Louisiana, supra, at 466.

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In this case, the demonstrators "sat-down" quietly (D. _______ A.). They gave no grounds for fear that violence of any sort of major outbreak would occur. There was no threat of violence from hostile observers, as there was in the Edwards, Fields, Henry, and Cox cases, supra. Nor would this have mattered in view of the fact that there was at all times adequate police protection.

(D A)? —

The fact that defendants were sitting down rather than picketing or marching does not in any way diminish the extent of their First Amendment protection. This is evident from the cases stemming from "sit-down" demonstrations at lunch counters. Notably, Mr. Justice Harlan's concurring opinion in Garner v. Louisiana, ~~supra~~, 368 U.S. 157, 82 SCt 248 (1961) at 201:

> "The Court has never limited the right to speak, a protected liberty under the Fourteenth Amendment...to mere verbal expression. The act of sitting at a privately owned lunch counter with the consent of the owner as a demonstration of opposition to enforced segration, is surely within the range of protections."

POINT 6. THE STATUTE IS UNCONSTITUTIONALLY VAGUE.

As stated in Point 5, a literal interpretation of section 17):29(2)(b) as in State v. Guillotte, SUPRA would apply the statute to the commonest varieties of conduct. Statutes capable of such interpretation are susceptivle to attacks on grounds of vagueness on fact patterns of the same type as those in the present cases. ?

In Cantwell v. Connecticut, ~~310 US 296~~ SUPRA, defendants were convicted under a general breach of the peace statute for stopping pedestrians and playing a phonograph record containing "offensive" language", The Court said, at 311:

> "Although the contents of the [phonograph] record not unnaturally aroused animosity, we think that in the absence of a statute narrowly drawn to define and puni~~c~~sh specific conduct as constituting a clear and present danger to a substantial interest of the state, the *petitioner's communication, considered in the light of the constitutional guarantees, raised no such clear and present menace to public peace as to render him liable to conviction* of the common law offense in question."

Yet in the *Cantwell* case, the defendants were definitely active, while here the defendants were completely passive.

Although the New Jersey statute forbidding obstructing and interfering is broad, it is not a general breach of the peace statute. When such statutes are struck down it is usually, as in the *Cantwell* case, because they define no specific form of conduct. In the case of statutes in the nature of section 170:29(2)(b) a "type" of conduct is mentioned generally, but no standard is provided for determining the extent to which the conduct must be indulged in to be punishable. As stated previously, even innocuous or incidental obstructors could become the subjects of punishment. *People* v. *Nixon*, *supra*; *People* v. *Carcel*, *supra*; contra~~c~~t, *People* v. *Guillotte*. Unlike the New Jersey statute, the New York statute provides *both* the broad, common law "breach of the peace" standard *and* the more specific terminology ("obstructs, interferes,..., etc." Penal Law, § 722, supra). If New Jersey places a "breach of peace" limitation (such as that applied by New York, set forth in part 1) on "obstruct or interfere", the problem is alleviated. In such an event, moreover, the "*peaceful* expression of unpopular views" engaged in by the defendants in this case, as well as other conduct undamaging to the well-being of the community, would need no protection against a vague statute.

If, on the other hand, the New Jersey courts fail to impose a *reasonable* limitation on the words "obstruct or interfere" (*State* v. *Furino*, *supra*), it would, as now, be necessary to "speculate as to the meaning of penal statutes." *Lanzetta* v. *New Jersey*, 306 US 451, 59 SCt 618 (1939); ← ? *State* v. *Caez*, *supra*.

POINT 7. THE CONVICTION OF DEFENDANT CALLENDAR UNDER § 170:29(2)(b) FOR REMAINING WHERE THE POLICE PLACED HIM VIOLATE DUE PROCESS.

The approach taken by the police to the defendants in these cases is clearly illustrated by the case against

defendant Callendar. Police witnesses stated consistently that Mr. Callendar remained on the spot on which he had been placed (D. ________ A.). Yet he was arrested and charged with obstructing the entrance to the Council Chamber for doing no more than that. His conviction for the "novel" crime of being where a police officer had placed him and ordered him to remain is evidently violative of the "due process" clause of the Fourteenth Amendment.

FRE

STATE OF NEW JERSEY vs. SMITH
SMITH vs. STATE OF NEW JERSEY, (CORRESPONDENCE, NOTES, CLIPPINGS)
1964 – 1967

of Wisconsin

Please Retain Original Order

NE Regional

November 16, 1964

Mr. Herb Callender
CORE Northeast Regional Office
48 West 125th Street
New York 27, N.Y.

Dear Herb,

Enclosed is the AP item that I read to you over the phone today. Let's hope it will help!

Again, for whatever it is worth, I understand Martin Fox is on the Board of Education (whether of the state or the city I don't know). The mother of Nicholas deB. Katzenbach used to be on the New Jersey Board of Education, I read in this week-end's edition of the N.Y. Post. Katzenbach is from Trenton, grew up there.

When Mr. Rachlin is back from New Orleans I will tell him that the trial is coming up around December 3rd and he will probably want to get in touch with Mr. Fox before that.

Success!

Sincerely,

Hannie de Leeuw

Enc./

Item received over AP Teletype Monday, November 16, 1964:

115
NEW MEDIA

TRENTON, N.J. (AP) - THE NEW JERSEY SUPREME COURT ORDERED TODAY A BAN ON PRETRIAL STATEMENTS TO NEWS MEDIA BY PROSECUTORS, POLICE AND DEFENSE ATTORNEYS ABOUT GUILT OR INNOCENCE IN CRIMINAL TRIALS.

THE COURT SAID IT COULD ENFORCE THE BAN ON PROSECUTORS AND DEFENSE LAWYERS THROUGH ITS POWER UNDER THE CANONS OF PROFESSIONAL ETHICS. IMPROPER STATEMENTS BY POLICE OFFICIALS SHOULD BE PENALIZED BY THEIR SUPERIORS AS CONDUCT UNBECOMING A POLICEMAN, THE COURT SAID IN A DECISION BY JUSTICE JOHN J. FRANCIS.

THE POLICY XSTATEMENT CAME IN A DECISION UPHOLDING THE FIRST DEGREE MUDER CONVICTION OF LOUIS VAN DUYNE, SERVING A LIFE SENTENCE FOR THE KILLING OF HIS ESTRANGED WIFE IN PATERSON.

ONE OF VAN DUYNE'S GROUNDS FOR APPEAL WAS HIS CONTENTION THAT NEWSPAPER ACCOUNTS WERE READ BY PROSPECTIVE JURORS AND PREJUDICED HIS CHANCES FOR A FAIR TRIAL. THE TRIAL JUDGE ORDERED THE JURY SEQUESTERED FROM THE SECOND DAY OF THE TRIAL TO PREVENT THEIR READING NEWSPAPER STORIES. FRANCIS SAID THERE WAS NO EVIDENCE THE JURORS LIED WHEN THEY SAID THEY WERE UNPREJUDICED.

BUT HE ADDED, "UNFAIR AND PREJUDICIAL NEWSPAPER STORIES AND COMMENT BOTH BEFORE AND DURING TRIAL OF CRIMINAL CASES ARE BECOMING MORE AND MORE PREVALENT THROUGHOUT THE COUNTRY."

HE SAID SOME CONVICTIONS HAVE HAD TO BE REVERSED BECAUSE OF NEWSPAPER ACCOUNTS, CASTING "A HEAVY BURDEN, FINANCIAL AND OTHERWISE, ON THE PUBLIC AND THE DEFENDANT."

SR130PES 11/16

File NE Reg.

To: Lou Smith
From: Carl Rachlin

November 19, 1964

Summary of telephone conversation between Carl Rachlin, General Counsel of CORE, and Martin Fox, Esq. on November 18, 1964, re case in Trenton, N.J.

1) Mr. Rachlin told Mr. Fox to get a continuance, to have the trial put off as long as possible.

2) As for removing to another County, Mr. Fox said this was a possibility but he didn't think there was any real chance.

3) They discussed the question of whether we ought to have a talk with the Mayor of Trenton, who is the one who made the fine public gesture of buying into a Negro neighborhood, and seeing if we can do something through him to get the case withdrawn.

   Mr. Fox said he would call the mayor.

David Fox 12/5/64 re Trenton

Judge expresses himself in advance -

10:00 AM — 7:00 PM -

Sit down outside City Council Meeting

"Disorderly persons offense"

Appeal de novo

David Fox has already started appeal procedure - it will be soon

---

f/u 12/20

December 10, 1964

David Fox, Esq.
570 Broad Street
Newark, New Jersey

Dear Mr. Fox,

Mr. Lou Smith advised us that $15.00 was needed to file papers for the appeal of our case in Trenton.

Enclosed is a check in this amount. Our auditors are very insistent that we have a statement to back up all payments, and we will therefore appreciate your sending us one as soon as you can.

Thank you for all your assistance.

Sincerely,

Hannie de Leeuw
Secretary to Carl Rachlin,
General Counsel

cc: Mr. Louis Smith

Enc./

CR:hdl

FOX, YANOFF AND FOX
COUNSELLORS AT LAW
570 BROAD STREET
NEWARK, N. J. 07102
MARKET 2-3624

JACOB FOX
LEO YANOFF
MARTIN S. FOX
DAVID I. FOX

DEC 14 1964

December 11, 1964

Hannie de Leeuw, Secretary
to Carl Rachlin, General Counsel
Congress of Racial Equality
38 Park Row
New York, New York

Re: State vs. Lou Smith et als

Dear Miss De Leeuw:

I received the $15.00 check for the filing of the Appeal in the above matter and have forwarded it to Mrs. Ruth Lewis in Trenton who I believe actually laid out the funds for the filing fee.

Since you requested a statement for this sum, I am enclosing it herewith.

Very truly yours,

David I. Fox

DAVID I. FOX

DIF:AG
Enclosure

original statement to Bookkeeping

FOX, YANOFF AND FOX
COUNSELLORS AT LAW
570 BROAD STREET
NEWARK, N. J. 07102
MARKET 2-3624

JACOB FOX
LEO YANOFF
MARTIN S. FOX
DAVID I. FOX

December 16, 1964

Carl Rachlin, Esq.
General Counsel
Congress of Racial Equality
38 Park Row
New York, N. Y.

Re: State vs. Lou Smith et als

Dear Mr. Rachlin:

You will recall that I spoke to you with regard to the above case shortly after the trial in the Municipal Court.

Today I received an Order designating the date of the trial de novo. It will be held on January 13, 1965 at 11:00 a.m. in the Courtroom of Judge Barlow in Trenton. You indicated that you would like to discuss the case with me and perhaps with some of the defendants prior to that time and that you would like to attend the trial. I have no objection to your actually trying the case while I sit with you.

noted

In any event please let me know when you would like to discuss the preparation.

Very truly yours,

DAVID I. FOX

DIF:AG

Special Delivery

January 11, 1965

David I. Fox, Esq.
Fox, Yanoff & Fox
570 Broad Street
Newark, New Jersey 07102

Dear David,

Enclosed is a copy of the opinion in the Lawson case, which I hope may be of some help to you.

Mr. Karpatkin's office is sending you the decision in the Collins case, as well as a copy of Mr. Karpatkin's brief.

With kindest regards,

Carl Rachlin
General Counsel

Enc./

CR:hdl

FOX, YANOFF AND FOX
COUNSELLORS AT LAW
570 BROAD STREET
NEWARK, N. J. 07102
MARKET 2-3624

JACOB FOX
LEO YANOFF
MARTIN S. FOX
DAVID I. FOX

JAN 26 1965

January 25, 1965

Carl Rachlin, Esq.
General Counsel
Congress of Racial Equality
38 Park Row
New York, New York

Re: State vs. Smith et als

Dear Mr. Rachlin:

The new date for hearing in the above matter is February 8, 1965 at 9:30 a.m. at the County Court House in Trenton. The Judge is J. Wilson Noden. I have sent Mrs. Lewis a letter as to the time and place. Will you please contact Herb Callender and any others who you are able to contact and have them attend. They should meet me at the Courtroom at 9:15 a.m. If there is any question as to the ability of any defendants to attend, please let me know so that we can avoid the difficulties that were encountered at the last appearance when Herb Callender did not show up.

I am still ready to go over the case with you and with any or all of the defendants if you think this will be helpful.

Sincerely,

David I Fox

DIF:AG

DAVID I. FOX

FOX, YANOFF AND FOX
COUNSELLORS AT LAW
570 BROAD STREET
NEWARK, N.J. 07102
MARKET 2-3624

JACOB FOX
LEO YANOFF
MARTIN S. FOX
DAVID I. FOX

FEB 15 1965

February 11, 1965

Carl Rachlin, Esq.
General Counsel
Congress of Racial Equality
38 Park Row
New York, N.Y.

Re: State v. Smith et als

(Trenton)

Dear Mr. Rachlin:

As you know from our telephone conversation on Tuesday, the trial of the Municipal Court appeal involving six members of C.O.R.E. was completed in the Mercer County Court. The first count of each of the five Complaints was dismissed on the appeal and therefore the $50.00 fines that existed as to each of those counts were eliminated. In addition, the fine of $200.00 imposed upon Louis Smith on the second count of his Complaint was reduced to $100.00. As a result the total of all existing fines is now $800.00.

The Judge granted a 30-day period beginning Tuesday, February 9 in which these fines may be paid. Of course, they should be paid within that time.

As you probably know, at the request of Henry Schwartzchild I called the Municipal Court of Trenton last week with regard to cases that were coming on for hearing involving C.O.R.E. members who were arrested for sit-ins. The purpose of my call was to secure an adjournment of the case. I spoke to the Magistrate and he agreed to adjourn it until February 17, 1965 at 9:30 a.m. The trial is scheduled for that date. I do not represent the defendants in that case and I hope that you have someone who does, but in any event this is to remind you that the trial is currently listed for February 17 and an attorney should appear at that time.

Very truly yours,

David I. Fox

DAVID I. FOX

copy to Lou Smith
Hal Callender

DIF:AG

Dear David
Thanks for your [illegible]

Please give me
your candid opinion
on the possibilities of
an appeal. It is not only
the $800 — but the principle
also. I am not quite certain what
the violation consists even though
I know the charge and remember
the evidence against them. Sincerely

February 16, 1965

David I. Fox, Esq.
Fox, Yanoff and Fox
570 Broad Street
Newark, N.J. 07102

Dear David:

Thank you for your letter of the 11th inst. Please give me your candid opinion as to the possibilities of an appeal. It is not only the $800.00, but the principle also. I am not quite certain what the violation consists of, even though I know the charge and something of the evidence against them.

Sincerely,

Carl Rachlin
General Counsel

CR:jp

cc: Mr. Louis Smith
Mr. Herbert Callender

THE FOLLOWING DOCUMENTS ARE THE
BEST AVAILABLE.

FOX, YANOFF AND FOX
COUNSELLORS AT LAW
570 BROAD STREET
NEWARK, N.J. 07102
MARKET 2-3624

JACOB FOX
LEO YANOFF
MARTIN S. FOX
DAVID I. FOX

March 2, 1965

MAR 3 1965

Hannie de Leeuw, Secretary
to Carl Rachlin, General Counsel
Congress of Racial Equality
38 Park Row
New York, New York

Re: State vs. Lou Smith et als

Dear Miss De Leeuw:

In accordance with our conversation today enclosed is a copy of the letter I sent to Carl Rachlin on February 17, 1965. Apparently it was never received. I am also sending at your suggestion a copy of this letter and of the letter of February 17 to George Schiffer, Esq.

Very truly yours,

DAVID I. FOX

DIF:AG
Enclosures

c. c. George Schiffer, Esq.
40 E. 49th St.,
New York, New York

FOX, YANOFF AND FOX
COUNSELLORS AT LAW
570 BROAD STREET
NEWARK, N. J. 07102
MARKET 2-3624

JACOB FOX
LEO YANOFF
MARTIN S. FOX
DAVID I. FOX

MAR 8 1965

March 1, 1965

Carl Rachlin, Esq.
General Counsel
Congress of Racial Equality
38 Park Row
New York, New York

Re: State v. Smith et als.

Dear Mr. Rachlin:

This is to remind you that the time for paying the fine in the above matter will have expired on Tuesday, March 9.

Very truly yours,

DAVID I. FOX

DIF:AG

February 17, 1965

DeLepow

Carl Rachlin, Esq.
General Counsel
Congress of Racial Equality
38 Park Row
New York, New York

Re: State v. Smith et als.

Dear Mr. Rachlin:

Enclosed is a copy of one of the complaints in the above matter. The complaints as to all defendants are identical. The First Count of all the complaints except the complaint against Herbert Callender were dismissed. Therefore the convictions were based on the First and Second Counts of the complaint against Herbert Callender and upon the Second Counts of the complaints against the remaining defendants who are: Lily R. Lewis, Marva L. Amis, Louis S. Smith, Joyce L. Schurik and Williard D. Crittenden.

Although the complaint which is enclosed is in part identical with the Statutes involved, the complete Statutes are as follows:

1. N.J.S. 2A:170-28, Disturbing Assemblies. Any person who by noisy or disorderly conduct disturbs or interferes with the quiet or good order of any place of assembly, public or private, including schools, churches, libraries and reading rooms, is a disorderly person.

George Schiffer
40 E. 49th St
N.Y.

2. N.J.S. 2A:170-29. Offensive language; molesting or interfering with persons. Any person who in any place, public or private, obstructs, molests or interferes with any person lawfully therein, is a disorderly person.

The facts are pretty much as follows: On the evening of November 5 a public city council meeting was held in which the principal topic under discussion was the area redevelopment of a section of Trenton. Speakers from the public made statements from the platform on this question. One of the defendants, Mrs. Lily R. Lewis was among the speakers. All the defendants were seated in the extreme left-hand section of the audience as the audience is viewed from the speaker's platform. At one point the president of the city council admonished the audience in general to be quiet and not to indulge in demonstrations of any kind. In response to this Herb Callender said from the audience words to the effect that "We haven't done anything yet". The speaker ordered him removed. He refused to go of his own free will and was therefore dragged from the meeting room by two policemen. After he was dragged out he was placed in the hall outside the meeting room. The five other defendants then joined him and sat down beside him. The police claim that none of the defendants would leave the hall when asked. About 15 minutes after they sat down they were all dragged from the hall by the police. The extent to which the defendants obstructed passage in the hall outside the meeting room is in conflict, since the police say they blocked the doorway and the defendants and other witnesses indicate that they were against a wall in such a way as to not block the doorway. The defendants claim that no one ever asked them to leave the hallway but the police say that all were asked to leave. The police also claim that the defendants chanted the word "freedom" several times inside the meeting room while Herb Callender was being dragged from the meeting room.

The County Court Judge determined that there was insufficient evidence as to five of the defendants to support the charge of noisy and disorderly conduct in the meeting room. He determined however that sitting down in the hall under these circumstances was sufficient to create an obstruction within the terms of the Second Count of the complaints.

One basis for appeal might be on the technical ground that the Second Count of the complaint varies slightly from the Statute. You will note that the Statute says "any person who in any place" obstructs with others is a disorderly person. The complaint however says that these defendants obstructed and interfered with persons lawfully "therein", and by "therein" refers to the city council meeting. It could be argued that the sit down in the hall did not obstruct or interfere with the activities in the city council chamber even though there might have been an obstruction with the people who wandered into the hall itself. However it seems to me that the Courts would not go along with such a technical basis for restricting the Statute. In addition it might also be determined that the Second Count of each complaint refers to the hall as well as the meeting room since the hall so closely adjoins the meeting room.

The difficult question here is the problem of vindicating conduct which on its face appears unlawful. The Judge in his opinion said that it was only prompt action by the police which prevented further disturbances.

I have read the recent Supreme Court cases involving sit-ins and picketing and of course have read the briefs and cases which you were good enough to have sent to me. I see nothing in any of these cases which provides constitutional protection to the acts committed by these defendants.

There were other arguments I made at the trial de novo which I will not repeat here since I do not think that they would have much importance in an appeal. You will recall that we started this case at one point without the presence of Herb Callender and even completed the testimony of a first witness for the State who was the president of the city council. However at the end of this testimony the Judge decided that it would be improper to proceed without Herb Callender being present. Therefore on the new date the trial was started all over again and the testimony of the city council president was taken once more. Some of the defendants suggested to me that this involved an issue of double jeopardy. I disagree. The only reason for starting the trial again was to be absolutely fair to Herb Callender and I cannot see how this should be used or could be used as a basis for an appeal.

There are practical aspects to the appeal too. The appeal from the Municipal Court is a very inexpensive one since it involves no record and is otherwise simplified. However in an appeal to the Appellate Division the record must be transcribed and printed. The expense for this would be approximately $500.00. In addition a brief must be printed and $100.00 must be deposited as security for costs. These are real expenses which I think you should know about. There is a procedure in New Jersey for eliminating some of these expenses in the case of poverty but this procedure is not simple and I do not think that it would work here.

Please let me know if you want to discuss the question of appeal with me further. I will be glad to consider it with you. As you can see from what I have written above I am pessimistic about the prospects of appealing.

Very truly yours,

DIF:AG

DAVID I. FOX

CORE Interoffice Memo

TO: Carl Rachlin March 3, 1965

FROM: Hannie de Leeuw

RE: Trenton case

Upon receipt of David Fox' letter of March 1st (attached) I phoned him. He said that he had replied on February 17th to your letter of the 16th, it was a 4-page letter explaining details of the case and why he did not feel an appeal was warranted. As we did not receive this letter, he would send us a copy right away.

I asked him also to send a copy to George Schiffer so that, in your absence, George could consider whether he concurred in Fox' opinion--which I doubted he would.

I called George and he knows something of this case and said that, as a lawyer, a CORE lawyer, he feels we should definitely appeal this case. He couldn't make a policy decision as to the cost - about $600 - of the appeal, and we decided I would check this out with George Wiley.

George Wiley says he also thinks we should appeal, and wondered if SEDF could pay for this. I said possibly yes,

You and George Wiley and George Schiffer should all discuss this and decide about how to approach SEDF.

The letter coming from Fox tomorrow will also be attached to this memo.

HdL

Hannie

P.S. I have done nothing about seeing if another lawyer will handle the appeal. Obviously, Fox would not be indicated.

GEORGE SCHIFFER
ATTORNEY AT LAW

40 EAST 49TH STREET
NEW YORK, N.Y. 10017

PLAZA 2-8060

COPY

March 4, 1965

David I. Fox, Esq.
Fox, Yanoff and Fox, Esqs.
570 Broad Street
Newark, New Jersey 07102

Re: State v. Lou Smith et als

Dear Mr. Fox:

I have your letter of March 2, 1965, to Hannie de Leeuw with the enclosures.

Your conclusion does not, in my opinion, take into consideration the Constitutional aspects of the matter.

I am enclosing memoranda concerning some recent Supreme Court decisions (it being understood that these memoranda do not cover cases of the present term).

The case involves in the most direct fashion conceivable the right of free speech and the right to petition for redress of grievances. The conduct of the defendants was not as you suggest, on the face of it, unlawful. On the contrary, on the face of it, the defendants were in the exercise of their Constitutional rights when they were unlawfully arrested after being unlawfully ejected from the meeting room.

These Civil Rights cases can be and are being won every day. It is essential, in dealing with these cases, to deal with the Constitutional issues, however. The present case demonstrates a situation which is quite normal in C.O.R.E. activities. The defendants attended a public meeting with an entirely lawful purpose. A certain amount of outcry is fairly normal at such meetings, in my experience and I am sure in yours. The members of the Council, resentful of the fact that C.O.R.E. was taking an interest in their scheme to subvert urban renewal (and to violate the applicable Federal laws) by the Fitch Way No. 3 Project, took Herb Callender's remarks as an excuse to eject Callender and the others. In the Circumstances, this was quite

David I. Fox, Esq. March 4, 1965

COPY

improper. I think that an Appellate Court would not regard the making of one or two comments from the floor of a meeting concerning a highly controversial undertaking as it is orderly or as a basis for abridging the rights of the defendants to attend the meeting or to be heard there.

Having been unlawfully ejected from the meeting, the C.O.R.E. people engaged in a peaceful protest by sitting in the hall. This was the hall of a public building, in which, consequently, the defendants had every right to be. Furthermore, since they had not abandoned their intent to be heard by the Council, their remaining in the hall was entirely consistent with a lawful purpose. If it is the contention of the prosecution that only Callender was ejected from the Council meeting, then the others plainly had every right to remain in the hall. If the gravamen of the complaint is that the defendants were blocking the door, then the burden is on the people to show who was blocking the door and who was not (since, plainly, not all the defendants were blocking the door). Further, it would be encumbent on the prosecution to prove that there was obstruction of specific persons desiring to enter or leave the Hearing Room.

Its orderly conduct status are normally drawn in a loose way. If they were to be applied literally, they would create a police state. Consequently, they are never applied literally. C.O.R.E.'s experience has been that the attempt has been made to apply them literally to demonstrators, even though the demonstrators are not committing a breach of the peace, (just the origin of the status). You cannot exercise your Constitutional rights without disturbing somebody. As you are aware, it has been repeatedly held that the Constitutional rights are paramount. I am sure that you will find further support for these arguments in the New Jersey Constitution.

GEORGE SCHIFFER
ATTORNEY AT LAW
40 EAST 49TH STREET
NEW YORK, N.Y. 10017
PLAZA 2-8060

Above all, the C.O.R.E. lawyer must understand the motives of his defendants. These motives are not to create disorder but to seek by peaceful means the just making and enforcement of laws. The protection of such conduct is the highest purpose of the American legal system.

Sincerely yours,

George Schiffer

GS/xtm

cc: Mr. Carl Rachlin

COPY

GEORGE SCHIFFER

COPY

March 8, 1965

Mr. Leslie W. Finch
Keenan and Finch
7 Tappan Avenue
Belleville 9, N. J.

Dear Mr. Finch:

It was a great pleasure to meet you during the legal conference. I regret that we did not have time to discuss further some of the problems raised.

As I told you, we can find someone to write a brief on appeal in the Trenton case.

I have not been able to find someone as yet to undertake a full research job on the New Jersey statute. For what it is worth, I am sending you a memorandum on Section 722, New York Penal Law.

I take a somewhat more optimistic view of the case than you. It is fundamental that Civil Rights take precedent over many of the interests protected by such statutes as New Jersey and that the application of the New Jersey statute literally, would be unconstitutional.

In this case the defendants had a right to petition for redress. They did this peacefully in a public building. The defendants were invited to discuss the matter with the Mayor and did do for some period of time. The fact that he then asked the defendants to leave and that the defendants refused to leave, does not alter the fundamental lawful character of the defendants presence in the Mayor's office.

Furthermore, there is a line to be drawn between objectionable conduct and criminal objectionable conduct. Plainly the mere fact that someone annoys me in New Jersey does not make that person a criminal (at least I hope not). I should argue that a public official in the course of performing his duties is less subject, rather than more subject to criminal protection. When a man undertakes to become a public servant, he undertakes to deal patiently

COPY

and courteously with his employer, the public. The Mayor had no more right to clear his office by having the petitioners arrested, then he had to refuse to see them because they had failed to take a bath. Yet as a private person he could exercise considerable selection of the persons he would admit to his house.

Furthermore, given the circumstances that the defendants were discussing with the Mayor a highly charged issue and that the Mayor was, in their opinion, unresponsive and discourteous, the criminal charge becomes almost ludicrous.

I do not hesitate to agree with you that in terms of a highly theoretical discussion of constitutional principles, the state of New Jersey might have police powers sufficient to control petitioners under some conditions. Yet the recent line of Supreme Court cases (*Edwards*, *Fields*, *Henry*, etc.) suggest that police power is far more circumscribed than theoretical conversations might have led us to suppose. In those cases the state statutes held to be unconstitutional were in many respects similar to the New Jersey statute. Rights under the constitution were upheld despite considerable interference, annoyance, molestations, etc. I find it difficult to conceive how constitutional rights can be exercised without obstructing, molesting or interfering with someone. The entire purpose of a demonstration is to cause somebody to pay attention to matters which they would prefer to avoid. Like the Ancient Mariner, the demonstrations stoppeth one of three; and if the rime is lengthy, at least it is interesting.

With best wishes.

Sincerely,

George Schiffer

cc: Carl Rachlin

March 16, 1965

Leslie W. Finch, Esq.
Keenan and Finch
7 Tappan Avenue
Belleville 9, N.J.

Dear Walter,

As you told me, you were prepared to go ahead with the appeal if we were able to get you assistance in the preparation of the brief. Harold Braff, of 1180 Raymond Boulevard, Newark (Tel.: 677-1700) has offered to give assistance in this regard, and Steve Nagler, a young attorney who works with us in New York in Mr. Schiffer's office will do the necessary research, guided, I trust, by you and Mr. Braff.

I spoke to Mrs. Finch about this a couple of weeks ago but do not know whether she and Mr. Braff were in touch with each other, but I assume there will be no problems.

With kindest personal regards and with a wish to see you both soon,

Sincerely,

Carl Rachlin
General Counsel

cc: Harold Braff, Esq.
Stephen M. Nagler, Esq.

CR:hdl

FOX, YANOFF AND FOX
COUNSELLORS AT LAW
570 BROAD STREET
NEWARK, N. J. 07102
MARKET 2-3624

JACOB FOX
LEO YANOFF
MARTIN S. FOX
DAVID I. FOX

March 8, 1965

Carl Rachlin, Esq., General Counsel
Congress of Racial Equality
38 Park Row
New York, N. Y.

MAR 9 1965

Re: State v. Smith

Dear Mr. Rachlin:

Enclosed is a copy of a letter I sent to George Schiffer, Esq. Your secretary suggested that I send him a copy of the previous letter I had sent to you with regard to the prospects of appealing the case.

I await your decision.

Very truly yours,

DAVID I. FOX

DIF:AG
Encl.

FOX, YANOFF AND FOX
COUNSELLORS AT LAW
570 BROAD STREET
NEWARK, N. J. 07102
MARKET 2-3624

JACOB FOX
LEO YANOFF
MARTIN S. FOX
DAVID I. FOX

COPY

March 8, 1965

George Schiffer, Esq.
40 E. 49th St.,
New York, N. Y. 10017

Re: State v. Lou Smith et als

Dear Mr. Schiffer:

I have your letter with regard to the above matter. It is of little practical use to me since you do not cite a single case in the letter. As a lawyer considering an appeal I am of course primarily interested in the law.

As you can see from the letter I sent to Mr. Rachlin, I tried this case twice in Trenton. The costs of suit would be considerable if there were an appeal. I expect that Mr. Rachlin will discuss this with me shortly.

Very truly yours,

DIF:AG

DAVID I. FOX

c. c. Carl Rachlin, Esq.

X

March 19, 1965

David Fox, Esq.
570 Broad Street
Newark, N.J. 07102

Dear David,

I was out of town when you and George Schiffer had your exchange of letters. Do I assume correctly that the Notice of Appeal will be or has been filed?

A young attorney working for the CORE Scholarship, Education and Defense Fund, Steve Nagler, is preparing a memorandum on the statutes involved in your case. We will, of course, have one of our volunteers do all or as much of the brief as you would like.

I am very anxious to create a committee of Northern New Jersey lawyers who would be available to help in civil rights cases providing, of course, they are not called upon too often. Would you be able to suggest to me the names of lawyers I could get in touch with for this purpose?

With many thanks for your help and I trust we will have the pleasure of getting together soon, if things ever slow down sufficiently!

Kindest regards,

Carl Rachlin
General Counsel

CR:hdl

File

FOX, YANOFF AND FOX
COUNSELLORS AT LAW
570 BROAD STREET
NEWARK, N.J. 07102
MARKET 2-3624

JACOB FOX
LEO YANOFF
MARTIN S. FOX
DAVID I. FOX

MAR 24 1965

March 23, 1965

Carl Rachlin, Esq., General Counsel
Congress of Racial Equality
38 Park Row
New York, New York

Re: State vs. Smith

Dear Mr. Rachlin:

I have not filed a Notice of appeal in the above matter. I received a call last week from Steve Nagler who indicated that he was working on a memorandum in the case. I should receive this soon.

I do not think that we have a sufficient basis to justify the cost of appealing the decision. Apparently George Schiffer disagrees. I think that the final answer should await the memorandum.

Of course as I have told you in the past the time within which we were supposed to pay the fines has expired. I assume that the fines have not been paid but we certainly face risks if they continue to not be paid.

I would be happy to be a member of a committee of northern New Jersey lawyers who would be available to help in civil rights cases. I will attempt to find other lawyers in this area who would be willing to also be available.

Very truly yours,

Adrian Grisoli, Secretary
to DAVID I. FOX

DIF:AG

March 27, 1965

David I. Fox, Esq.
Fox, Yanoff & Fox, Esqs.
570 Broad Street
Newark, New Jersey 07102

622-3624

Re: State v. Lou Smith et al

Dear Mr. Fox:

The memoranda, sent under separate cover, should, by this time have arrived. I hope that they will be of some use to you. Carl Rachlin and I have considered the matter contained and discussed the various points involved at some length.

If I can be of any further assistance to you please get in touch with me at George Schiffer's office. The number is PL 2-8080. I hope that we will be able to get together to talk about the cases before very long.

Good luck with the appeals.

Cordially,

Stephen M. Nagler

cc: Carl Rachlin

David Young

school teacher has a deal with an oil company to go to Indonesia to teach. She is negro. They tried to get out. Signed contract in 2/65. They asked her to take courses, which they never did before.

Green Estates Co INC
V.
Annie Reel.

L&T
44637-65
Issued June 10, 1965

267-6271

38 Park Row - 3rd floor
Green plaid raincoat
in Carl Rachlin's office CO~~7-1275~~

IRT to B'klyn Bridge.
Walk north
N.Y. City Civil, on
Center St.

Look for "non-appearance", notice, etc.

Clerk's office for Landlord & Tenant - LT #
What does it say

COPY

FOX, YANOFF AND FOX
COUNSELLORS AT LAW
570 BROAD STREET
NEWARK, N.J. 07102
MARKET 2-3624

JACOB FOX
LEO YANOFF
MARTIN S. FOX
DAVID I. FOX

March 2, 1965

Hannie de Leeuw, Secretary
to Carl Rachlin, General Counsel
Congress of Racial Equality
38 Park Row
New York, New York

Re: State vs. Lon Smith et al.

Dear Miss De Leeuw:

In accordance with our conversation today enclosed is a copy of the letter I sent to Carl Rachlin on February 17, 1965. Apparently it was never received. I am also sending at your suggestion a copy of this letter and of the letter of February 17 to George Schiffer, Esq.

Very truly yours,

DAVID I. FOX

DIF:AG
Enclosures

c. c. George Schiffer, Esq.
40 E. 49th St.,
New York, New York

March 27, 1965

Mr. Leslie W. Finch
Keenan & Finch
7 Tappan Avenue
Belleville, New Jersey

Dear Mr. Finch:

The Trenton cases certainly do provide a number of difficult, albeit challenging, problems. Carl Rachlin and I have been teasing our brains over them since we spoke.

At any rate, the product of all of this mental effort has finally been assembled and despatched to you, under separate cover. I hope that the memorandum on section 170-29 will be of some assistance in preparing the brief. Unfortunately, a copy was not simultaneously sent to Harold Braff, because I didn't have his address. He will receive a copy on Tuesday.

I look forward to discussing the cases with you in some detail, at your convenience. If I can be of any further assistance to you, please get in touch.

Good luck with the appeal. 'Twould be a splendid victory, even if it is in Trenton rather than Montgomery.

Cordially,

Stephen M. Nagler

cc: Carl Rachlin

Trenton
Case

March 29, 1965

Harold Braff, Esq.
1180 Raymond Boulevard
Newark, New Jersey

Dear Mr. Braff:

Welcome aboard.

Carl Rachlin and I have put in a great deal of work on the enclosed materials. I hope that you will find them helpful in the preparation of a brief. If I can be of any further assistance to you, please call me at George Schiffer's office, Plaza 2-8060.

Cordially,

Stephen Nagler

cc: Carl Rachlin

FOX, YANOFF AND FOX
COUNSELLORS AT LAW
570 BROAD STREET
NEWARK, N. J. 07102

MARKET 2-3624

JACOB FOX
LEO YANOFF
MARTIN S. FOX
DAVID I. FOX

MAR 31 1965

March 29, 1965

Carl Rachlin, Esq., General Counsel
Congress of Racial Equality
38 Park Row
New York, N. Y.

Re: State vs. Smith

Dear Mr. Rachlin:

I have received the two fine memos prepared by Stephen Nagler. I spoke to him yesterday and he suggested that a meeting be arranged between yourself and him with me in my office. I agree and await your pleasure as to the date.

We have three months from February 9, 1965 in which to file our notice of appeal. As I have indicated to you in the past the costs of the appeal would be in the area of $600.00.

The fines still stand and the final date for payment was March 9, 1965. The Judge who heard the case wrote to me inquiring about payment of the fines. In accordance with my conversation with you I advised him that cash payment was not available but that we were in a position to put up a bond. He has not answered yet and of course the fines still remain unpaid.

After our meeting in this office we can determine whether or not to file the notice of appeal. I take it that the preparation of the brief on the appeal would be handled by Stephen Nagler.

Very truly yours,

DAVID I. FOX

DIF:AG

c. c. Stephen M. Nagler

APR 21 1965

FOX, YANOFF AND FOX
COUNSELLORS AT LAW
570 BROAD STREET
NEWARK, N. J. 07102
MARKET 2-3624

JACOB FOX
LEO YANOFF
MARTIN S. FOX
DAVID I. FOX

April 20, 1965

Carl Rachlin, Esq., General Counsel
Congress of Racial Equality
38 Park Row
New York, N. Y.

Re: State vs. Smith

Dear Carl:

We must deposit money for the preparation of the record before we can file our appeal in the above matter. The court reporter who transcribed the case requires $275.00. A check in that amount payable to Albert M. Bernstein, Official Court Reporter, should be sent to me as soon as possible.

There is another court reporter involved who transcribed the testimony on the day that Herb Callender did not show up. I think that we should have this too and as soon as I find out the deposit needed to obtain that part of the record, I will advise you.

As to the stay of the fines I was unable to speak to the Judge but I wrote to him again requesting a stay or permission to post a bond. We can only wait for his answer. We have a right to make this application at any time regardless of whether the appeal has been filed or not.

Very truly yours,

DIF:AG

DAVID I. FOX

Trenton cases

April 22, 1965

Mr. Luther Burnette
91 Hedley Place
Buffalo, New York

Dear Luther,

Enclosed is a copy of the memorandum I promised you on the telephone the other day.

You will note that one part of it particularly relates to a sit-in at the mayor's office in Trenton, New Jersey. I trust that this will be of help to you and your and your lawyer.

Perhaps youror your attorney might like to discuss this with me in the near future.

Sincerely yours,

Carl Rachlin,
General Council

CR/cc

April 22, 1965

Mr. Marvin Rich, Director
CORE Scholarship, Education and
Defense Fund, Inc.
150 Nassau Street
New York, New York

In re: Trenton City Council

Dear Marvin:

We have just been advised that we will need $275 for the record in the Trenton City Council case. This does not include another part of the record for which we are getting an estimate. There will be costs for printing the record and a brief which I will try to give to you soon.

It is my view that this case should be appealed even though the total cost for the appeal at this stage may be $700 to $800. I have been advised by New Jersey counsel that it is very difficult to obtain the right to appeal in forma pauperis.

The $275, however, we need in any event so that we can begin working on the appeal. Whatever further information you need, please advise me.

Regards.

Sincerely,

Carl Rachlin
General Counsel

CR:JG

cc: Fox, Yanoff and Fox Esqs.
Dr. George Wiley
Miss Joyce Ware

FOX, YANOFF AND FOX
COUNSELLORS AT LAW
570 BROAD STREET
NEWARK, N. J. 07102
MArket 2-3624

JACOB FOX
LEO YANOFF
MARTIN S. FOX
DAVID I. FOX

APR 2 7 1965

April 26, 1965

Carl Rachlin, Esq., General Counsel
Congress of Racial Equality
38 Park Row
New York, New York

Re: State vs. Smith

Dear Carl:

I have received a copy of the letter you sent in the above matter requesting the funds for the deposit for the transcript.

This is to remind you that before we can file our notice of appeal we must make the deposit with the stenographer. After the deposit is made we must personally serve the prosecutor in Trenton and the Judge in Trenton who heard the case. Then the notice of appeal can be filed. All this must be completed by May 7, 1965.

Therefore it is necessary that the deposit check be received in my office by, at the latest, May 3.

Very truly yours,

DAVID I. FOX

DIF:AG

see me

FOX, YANOFF AND FOX
COUNSELLORS AT LAW
570 BROAD STREET
NEWARK, N. J. 07102

MARKET 2-3624

JACOB FOX
LEO YANOFF
MARTIN S. FOX
DAVID I. FOX

MAY 3 1965

April 30, 1965

Carl Rachlin, Esq., General Counsel
Congress of Racial Equality
38 Park Row
New York, New York

Re: State vs. Smith

Dear Carl:

In addition to the check in the sum of $275.00 payable to Albert Bernstein which I advised you we need in the above matter we also need a check payable to Edwin Silver, C.S.R. in the sum of $33.00. This latter check is for the deposit for the testimony that was taken on the day that Herb Callender did not show up.

As you know next week is the last week that we have for obtaining the deposit.

Very truly yours,

DIF:AG

DAVID I. FOX

see me

FOX, YANOFF AND FOX
COUNSELLORS AT LAW
570 BROAD STREET
NEWARK, N. J. 07102
MARKET 2 - 3624

JACOB FOX
LEO YANOFF
MARTIN S. FOX
DAVID I. FOX

MAY 3 1965

April 30, 1965

Carl Rachlin, Esq., General Counsel
Congress of Racial Equality
38 Park Row
New York, New York

Re: State vs. Smith

Dear Carl:

In addition to the check in the sum of $275.00 payable to Albert Bernstein which I advised you we need in the above matter we also need a check payable to Edwin Silver, C.S.R. in the sum of $33.00. This latter check is for the deposit for the testimony that was taken on the day that Herb Callender did not show up.

As you know next week is the last week that we have for obtaining the deposit.

Very truly yours,

DAVID I. FOX

DIF:AG

Ike Reynolds
for Smith
calls
re Arthur
Morrison in
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Scofield
Barrack

L
1
mr on OSD
Cent
James Evans
Immediate
General

MAY 6 1965

GEORGE SCHIFFER
ATTORNEY AT LAW

40 EAST 49TH STREET
NEW YORK, N.Y. 10017

PLAZA 2-8060

May 5, 1965

Mr. Carl Rachlin
CORE
38 Park Row
New York, New York

Dear Carl:

I do not think that it is advisable that we wait any longer before reaching a determination on what to do with the case arising in the Office of the Mayor of Trenton. Let's try to set up a meeting between George, yourself and I and if possible Walter Finch so that we may finally make some determination. I left a message with Walter's office on Friday, April 23rd telling hime to go ahead and file the Notice of Appeal. I assume that he has done so. What next?

While we are at it have you heard from David Fox recently? What is happening with his cases if anything?

By the way I still have not received even one copy of the Lawson brief. Neither has George. See you soon.

Cordially,

Steve

Steve

Dear Steve
~~It~~ After much consideration I
have decided it cannot be harmful
to appeal the Mayor's office case
in Trenton. We can receive
a bad decision faced
(over

upon these facts to the chance of getting a favorable one are so slight it is not worth the effort. I have advised Jim of this accordingly.

Please do nothing in New Jersey without speaking to me first. For your information Jim's going ahead and I hope you will be able to help him.

Regards to Betty

Yours

CR

Trenton Case

May 10, 1965

Stephen Nagler, Esq.
40 East 49th Street
New York, New York 10017

Dear Steve:

After much consideration, I have decided it would be harmful to appeal the Mayor's office case in Trenton. We can receive a bad decision based upon these facts. The chances of getting a favorable one are so slight it is not worth the effort. I have advised Finch's office accordingly.

Please do nothing in New Jersey without speaking to me first. For your information, Fox is going ahead and I hope you will be able to help me.

Regards to George.

Yours,

Carl Rachlin
General Counsel

CR:JG

Enclosures - 2 Lawson briefs
(one for Nagler and one for Schiffer)

KEENAN AND FINCH
COUNSELORS AT LAW
7 TAPPAN AVENUE
BELLEVILLE, N. J. 07109

PLYMOUTH 9-2807

LAWRENCE E. KEENAN
LESLIE W. FINCH
MURIEL FINCH

JUN 1 1965

May 27, 1965

Carl Rachlin, Esq.
C.O.R.E.
40 East 49th Street
New York, New York

Dear Carl:

I am happy to inform you that Judge Noden of the Mercer County Court reduced the fine of each defendant on the appeal from the municipal court to fifty dollars. He imposed final sentence on May 24, 1965 and has given each defendant one month within which to pay the fine. As I believe Columbia C.O.R.E. has six-hundred dollars in cash bail posted, I suggest that the fines be paid within this period in order to avoid a forfeiture of bail.

I am sorry that we were interrupted in the middle of our phone conversation the other day but I assume that the long distance call which interrupted us resulted in some hectic work, as usual. I do completely agree with the result reached by you and Muriel when you discussed the advisability of appealing this case and I assume the third reason you were about to mention for not appealing this particular set of facts is that there are other New Jersey cases pending which will make a better factual situation for a test of the statute. In any event, the time to appeal these particular cases did not commence to run until Monday, May 24.

I presume I shall see you at the L.C.D.C. conference June 5 and 6.

Very truly yours,

Walter

Leslie W. Finch

cc: Alan Rausnitz
John McDowell
David Erikson
Rafael Martinez
Michael Flug

[illegible] 3 [illegible]

FOX, YANOFF AND FOX
COUNSELLORS AT LAW
570 BROAD STREET
NEWARK, N.J. 07102
MARKET 2-3624

JACOB FOX
LEO YANOFF
MARTIN S. FOX
DAVID I. FOX

June 2, 1965

Carl Rachlin, Esq.
Congress of Racial Equality
38 Park Row - Room 317
New York, New York

Att: Stephen M. Nagler, Esq.

Re: State v. Lou Smith et als.

Dear Stephen:

I spoke to Carl Rachlin's secretary yesterday and she suggested that I send all the documents in the above matter to C.O.R.E. headquarters where you will receive them. Enclosed you will find a copy of the partial transcript of testimony which was transcribed by Albert Bernstein, a Court reporter. Actually this transcript is the complete transcript of the trial from beginning to end. However I am also enclosing a transcript of the testimony of one Frank V. Walsh, Jr., which was taken prior to the other transcript. You will recall that on the date that the first transcript was taken, Herbert Callender could not attend the trial and therefore it was started anew on a subsequent date. I have caused both records to be filed with the Court and therefore am sending copies of both to you. It might be to our advantage to use both or refer to both in our brief.

Since at this time these are the only copies that we have of the transcripts I suggest that you exercise care in retaining them. Of course most of them if not all would be printed in the appendix.

For your guidance I am enclosing photostatic copies of the Supreme Court Rules with regard to the printing of briefs. Of course our appeal is to the Appellate Division of the Superior Court of New Jersey but as you can see from the enclosed rules the form of the Supreme Court is followed. I am also enclosing copies of the pertinent Appellate Division Rules as to these briefs. If you desire I can send to you a printed brief that has been used before the Appellate Division.

I do not know what printer you intend to rely on to complete the brief and appendix. Our New Jersey printers of course are familiar with the form to be followed and also complete service for us. Please let me know if you wish to use a New Jersey outfit.

Also enclosed are copies of a letter and notice received by this office from the Appellate Division setting forth the types of reproductive processes that are permitted.

In addition I have enclosed all of the disorderly persons act complaints that are relied on in this case. These are my only copies, and it seems to me that they will be reproduced in the appendix. Therefore you must have them. However, again, I must ask that you be careful not to misplace them. Further you will find herewith, a copy of the notice of appeal that has been filed in the case.

I must remind you that we have only 30 days from the date of the filing of the transcript, within which to complete everything. Please be sure to comply with this strict time schedule. The transcript was filed June 2nd.

I am sure your file and your recollection from our meeting in this office has given you a background of the facts of this case to the extent that the background is not set forth in this letter and its accompanying documents. However if you need anything additional or wish to clarify anything please call me and I will be happy to do whatever I can to assist in your preparation of the brief.

Very truly yours,

David Fox

DAVID I. FOX

DIF:AG
Enclosures

Trenton cases

June 7, 1965

Leslie W. Finch, Esq.
Keenan and Finch
7 Tappan Avenue
Belleville, New Jersey 07109

Dear Walter:

We are trying to raise money to pay the fines in the case of the sit-in in the Mayor's office in Trenton. I shall keep you both advised and I want you to know how much we appreciate what you have done in this case. Everybody enjoyed working with you. I hope that if we do not bother you too often you will consent to assist us in the near future. It was good to see you and Muriel on Saturday.

Sincerely,

CARL RACHLIN
General Counsel

CR/cs

FOX, YANOFF AND FOX
COUNSELLORS AT LAW
570 BROAD STREET
NEWARK, N. J. 07102

MARKET 2-3624

JACOB FOX
LEO YANOFF
MARTIN S. FOX
DAVID I. FOX

June 15, 1965

George Schiffer, Esq.
40 East 49th St.,
New York, N.Y. 10017

Att: Stephen M. Nagler, Esq.

Re: State v. Lou Smith et al

Dear Stephen:

Enclosed are the following briefs which may assist you in preparation of the brief in the above matter:

1. Brief of Martin S. Fox, in State vs. Fischer.
2. Brief and Appendix of Leo Yanoff in F & A Distributing Company against Division of Alcoholic Beverage.

Would you please return these to us when they have served your needs since it is important for us to have them in the office.

Sincerely,

David I. Fox

DAVID I. FOX

DIF:AG
Encls.

October 5, 1965

David I. Fox, Esq.
790 Broad Street
Newark, New Jersey

Dear David:

Thank you very much for the use of the enclosed legal materials. What do you hear from Trenton? Can Carl Rachlin argue the case? When is it coming on for argument?

Cordially,

SMN/cs

STEPHEN M. NAGLER

FOX, YANOFF AND FOX
COUNSELLORS AT LAW
570 BROAD STREET
NEWARK, N. J. 07102
MARKET 2-3624

JACOB FOX
LEO YANOFF
MARTIN S. FOX
DAVID I. FOX

OCT 13 1965

October 11, 1965

Carl Rachlin, Esq.
Congress of Racial Equality
38 Park Row-Room 317
New York, New York

Re: State vs Lou Smith et als

Dear Carl:

Stephen Nagler has told me that you desire to handle the oral argument in the above matter.

We have contacted the Appellate Division to determine if it will be permissible for you to argue the matter. The only requirement is that you be introduced by me or by a member of this firm at the time of the argument. In addition, Judge Goldmann of the Appellate Division asked that whoever is to argue the matter from out of state be reminded that it is not the practice in this State to simply present a set speech, although it is necessary to be prepared in that manner. It is the practice that a colloquy takes place in which sharp questioning is engaged from the bench by any one of the three Appellate Judges sitting in the case. In any event, I am sure you are aware of this practice.

As soon as I am advised of the date for the argument, I will get in touch with you so that we may plan to attend together.

Very truly yours,

DIF:FP

DAVID I. FOX

FOX, YANOFF AND FOX
COUNSELLORS AT LAW
570 BROAD STREET
NEWARK, N. J. 07102
MArket 2-3624

JACOB FOX
LEO YANOFF
MARTIN S. FOX
DAVID I. FOX

OCT 25 1965

October 21, 1965

Stephen M. Nagler, Esq.
Congress of Racial Equality
38 Park Row
New York, New York

Dear Steve:

I have your note with the two sample briefs enclosed. You asked if Carl Rachlin can argue the case. I had written directly to him advising him that it will be all right.

We have not received a date for the oral argument. I will let you know what the date is as soon as I receive it.

Sincerely,

DIF:FP

DAVID I. FOX

FOX, YANOFF AND FOX
COUNSELLORS AT LAW
570 BROAD STREET
NEWARK, N. J. 07102
MArket 2 - 3624

JACOB FOX
LEO YANOFF
MARTIN S. FOX
DAVID I. FOX

NOV 15 1965

November 12, 1965

Carl Rachlin, Esq.
Congress of Racial Equality
38 Park Row-Room 317
New York, New York

Re: State vs Lou Smith

Dear Carl:

Enclosed is a copy of an Order certifying the above matter to the Supreme Court of New Jersey. As you can see from the Order, this means that the matter was felt to be of sufficient importance to be heard directly by our Supreme Court.

We must supply the Clerk of the Supreme Court with six additional copies of our brief and appendix and of the reply brief.

Please either send these copies to me or forward them directly to the Clerk of the Supreme Court.

As per my previous letter, I understand that you will handle the oral argument. I will introduce you to the Court at the time of the hearing. We have not yet received the date for argument.

Very truly yours,

DAVID I. FOX

DIF:FP
Enclosure

OFFICE OF THE CLERK
SUPREME COURT OF NEW JERSEY
STATE HOUSE ANNEX
TRENTON, N.J.

JOHN H. GILDEA
CLERK

November 15, 1965

David I. Fox, Esquire
570 Broad Street
Newark 2, New Jersey

Vincent R. Panaro, Prosecutor
Court House
Trenton, New Jersey

Dear Sirs: State vs. Smith, et al.

The Supreme Court has certified the above case on its own motion. Will counsel please send in immediately six more copies of all briefs and appendices.

Very truly yours,

John H Gildea

NOV 22 1965

FOX, YANOFF AND FOX
COUNSELLORS AT LAW
570 BROAD STREET
NEWARK, N. J. 07102
MARKET 2-3624

JACOB FOX
LEO YANOFF
MARTIN S. FOX
DAVID I. FOX

November 19, 1965

Stephen Nagler, Esq.
Congress of Racial Equality
38 Park Row
New York, New York

Re: State vs. Smith, et al

Dear Steve:

Enclosed for your information is a copy of a letter that we received from the Supreme Court. As you can see, the Court asks that we immediately send six copies of all briefs and appendices. Would you please comply.

~~Very truly~~ yours,

Sincerely

DIF:FP

DAVID I. FOX

FOX, YANOFF AND FOX
COUNSELLORS AT LAW
570 BROAD STREET
NEWARK, N. J. 07102

MARKET 2-3624

JACOB FOX
LEO YANOFF
MARTIN S. FOX
DAVID I. FOX

DEC 10 1965

December 9, 1965

Carl Rachlin, Esq
Congress of Racial Equality
38 Park Row
New York, New York

Re: State vs Smith

Dear Carl:

This is to confirm my conversation with you yesterday at which time I indicated that the above matter is scheduled for Oral Arguement on Tuesday, December 21. We must appear before the Supreme Court of New Jersey at the State House Annex at Trenton, at 10 A.M. of that day.

The Clerk of the Court has asked me to inform him of the length of time your argument will consume. Please give me an estimate of the time as soon as possible so that I may so advise the Clerk.

I will introduce you to the Court at the time of the argument and, of course, you will then present the case.

At the trial two diagrams were used to demonstrate the location of the various parties at the time of the meeting of the City Council. Although these diagrams were never marked in evidence, the Supreme Court requested them, and the Prosecutor from Mercer County has forwarded them to the Court. I doubt that we will be able to get them but if you consider it important enough I will try to obtain them. Please let me know whether you wish them or not.

Dear David
Thank you for your letter of the 9th inst
It is my intention to come to Trenton the evening of the 20th.
We would like about 45 minutes for argument and about 10 minutes for rebuttal
over

It would seem to me simpler to go to the Court a little earlier on the day of the hearing and examine the diagrams then.

Sincerely,

DIF:FP

DAVID I. FOX

Cont'd

Please have the diagrams present, if humanly possible. Thanks. I am looking forward to the argument

Regards

December 13, 1965

David I. Fox, Esq.
Fox, Yanoff & Fox
570 Broad Street
Newark, New Jersey 07102

Dear David:

Thank you for your letter of the 9th. It is my intention to come to Trenton the evening of the 20th. We would like about 45 minutes for argument and about 10 minutes for rebuttal. Please have the diagrams present, if humanly possibly.

Thanks, I am looking forward to the argument.

Sincerely,

CARL RACHLIN
General Counsel

CR/cs

FOX, YANOFF AND FOX
COUNSELLORS AT LAW
570 BROAD STREET
NEWARK, N.J. 07102
MARKET 2-3624

JACOB FOX
LEO YANOFF
MARTIN S. FOX
DAVID I. FOX

Trenton

DEC 20 1965

December 14, 1965

Carl Rachlin, Esq.
Congress of Racial Equality
38 Park Row-Room 317
New York, New York

Re: State vs Smith, et al.

Dear Carl:

The diagrams to which I referred in my last letter will probably be available for our examination in the Office of the Clerk of the Supreme Court at 9 A.M. on December 21. The Clerk will also try to have these diagrams for inspection in his office on the afternoon of December 20.

I am making an effort to obtain for you a transcript of the testimony that was taken in a sit-in case that was decided at the County Court level arising from an incident in Newark. I will discuss this with you if my efforts are successful.

Sincerely,

DIF:FP

DAVID I. FOX

FOX, YANOFF AND FOX
COUNSELLORS AT LAW
570 BROAD STREET
NEWARK, N. J. 07102
MARKET 2-3624

JACOB FOX
LEO YANOFF
MARTIN S. FOX
DAVID I. FOX

December 16, 1965

Carl Rachlin, Esq.
180 Park Row
New York, New York

Re: State vs Smith

Dear Carl:

I spoke to your secretary at CORE today and she said that if I wanted to get anything to you before Tuesday, I should send it to your home. Enclosed is a copy of a decision that was handed down recently on a sit in that took place in Newark.

I also have a transcript of the proceedings before the Municipal Court, as well as the briefs of the parties. If you want these, please let me know. There are no plans to take an appeal from the Judgment of the County Court which wrote the enclosed opinion.

Sincerely,

DAVID I. FOX

DIF:FP
Enclosures

FOX, YANOFF AND FOX
COUNSELLORS AT LAW
570 BROAD STREET
NEWARK, N.J. 07102

MARKET 2-3624

JACOB FOX
LEO YANOFF
MARTIN S. FOX
DAVID I. FOX

March 22, 1966

MAR 23 1966

Carl Rachlin, Esq.
Congress of Racial Equality
38 Park Row-Room 317
New York, New York

Re: State vs Smith, et als.

Dear Carl:

As you probably know by now from the newspaper articles, the New Jersey Supreme Court affirmed the judgment of the Mercer County Court. Enclosed is a copy of the opinion. Where do we go from here?

Sincerely,

DAVID I. FOX

DIF:FP
Enclosure

ARTHUR GARFIELD HAYS
CIVIL LIBERTIES PROGRAM

New York University School of Law
Washington Square, New York 10003

212 SP 7-2000
EXT. 8404

NORMAN DORSEN
Director

cc Smith

RECEIVED

APR 5 1966

VLADECK, ELIAS, FRANKLE & VLADECK

April 4, 1966

HAYS MEMORIAL COMMITTEE

J. David Stern
Chairman
William Abramson
Roger N. Baldwin
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ADVISORY COMMITTEE

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J. Lee Rankin
Charles A. Reich
Joseph B. Robison
Alan U. Schwartz
Jack Sheinkman
Rowland Watts
Melvin L. Wulf

Carl Rachlin, Esq.
165 West 46th Street
New York, New York 10036

Dear Carl:

I have tried to reach you twice to tell you that I think CORE should go forward and file a petition in this case. Let me emphasize that there are some confusing aspects in the record, and I am not clear whethere there are appellate opinions. But there does seem to me to be a sufficient chance of a victory on constitutional grounds to justify seeking review.

I am sending the materials with this note to save time. Please don't hesitate to call me if you want elaboration on this note.

Sincerely,

ND:df
Enc.

May 2, 1966

Professor Norman Dorsen
N. Y. U. Law School
New York University
Waverly Place
New York, New York

Re: People v. Lou Smith, et al

Dear Prof. Dorsen:

Thank you very much for your letter and suggestions on this case. We are planning to proceed as quickly as possible. Carl and I are very sorry that N.Y.U. has chosen to schedule its examinations in such a manner as to conflict with your availability to assist us in preparing a petition for certiorari.

I think that you still have the opinion of the Supreme Court of New Jersey. If so, please get it back to me as soon as possible.

Cordially,

SMN:tp

Stephen M. Nagler
Associate to the General
Counsel

SCHOLARSHIP,
EDUCATION
AND DEFENSE
▤ FUND FOR
RACIAL EQUALITY
inc.
150 NASSAU STREET, NEW YORK, N.Y. 10038
TELEPHONE 964-8210

May 26, 1966

Albert X. Bader, Esq.
120 Broadway
New York, New York

Dear Mr. Bader:

Enclosed is the opinion of the Supreme Court of New Jersey in People v. Lou Smith. How are you progressing with the petition?

Very truly yours,

Steve Nagler

Stephen M. Nagler
Associate to the General
Counsel

SMN:tp
Encl:

Contributions are deductible for income tax purpo

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MAY 31 1966

FOX, YANOFF AND FOX
COUNSELLORS AT LAW
570 BROAD STREET
NEWARK, N. J. 07102
MARKET 2-3624

JACOB FOX
LEO YANOFF
MARTIN S. FOX
DAVID I. FOX

May 27, 1966

Stephen Nagler, Esq.
Congress of Racial Equality
38 Park Row
New York, New York

Re: State vs Smith

Dear Stephen:

The other day you asked me to see what I could do to obtain a copy of the complete transcript in the above matter, certified by the Clerk of the New Jersey Court to the United States Supreme Court.

I spoke to the Clerk of the New Jersey Supreme Court. He does not have the records in question. He would be able to certify the transcript which we printed in our appendix. He was familar with the procedure, and said that he would, if so instructed, prepare the certificate and send it to me along with the transcript as set forth in the appendix.

An original and one copy of the complete transcript is on file with the Clerk of the Mercer County Court in Trenton. His name is William Fiori. He was totally unfamilar with any procedure for certifying records to the United States Supreme Court. However, he agreed that if I would send him my copy of the transcript along with a form of certification, he would complete the form and return everything to me. He does have his own form for certification which he uses when a request is made for a certified copy. Is it necessary that a copy be certified to the United States Supreme Court or is it sufficient if it simply is certified by a Clerk?

In any event, please let me know if you want the whole record certified. If you do, I suggest that you send to me the complete copy of the transcript which you have along with, if possible, a form for certification.

Sincerely,

David I. Fox

DIF:FP

DAVID I. FOX /FP.

FOX, YANOFF AND FOX
COUNSELLORS AT LAW
570 BROAD STREET
NEWARK, N. J. 07102

MARKET 2-3624

JACOB FOX
LEO YANOFF
MARTIN S. FOX
DAVID I. FOX

JUN 2 1966

June 1, 1966

Stephen Nagler, Esq.
Congress of Racial Equality
38 Park Row
New York, New York

Re: State vs Smith, et al.

Dear Stephen:

Enclosed is a copy of a letter that I received with regard to the certification of the transcript in the above matter. As you can see, we will have to go to some expense if we deisre to use the full transcript.

Very truly yours,

David

DAVID I. FOX

DIF:FP
Enclosure

MERCER COUNTY CLERK'S OFFICE

COURT HOUSE • P. O. BOX 1777 • TRENTON, NEW JERSEY, 08607

WILLIAM H. FALCEY
County Clerk

May 31, 1966

Fox, Yanoff and Fox, Esqs.
570 Broad Street
Newark, N.J.

Re: State vs. Louis S. Smith, als.
App. 19-64
Docket No. 987

Dear Mr. Fox:

In reference to our telephone conversation, concerning certification of transcripts in the above matter.

Having brought this matter to the attention of our Chief Clerk of records, he informs me that we can not accept your copy of the transcript.

We can only make copies from the original filed in our office as true copy with the certification of the County Clerk, otherwise they would not be true copies as filed with the Clerk.

The cost is $1.00 per page plus $1.00 for certification. The total costs is $320.00.

Upon receipt of your check, we will make the necessary copies.

Very truly yours,

William Fiore
Chief Clerk of
the Court Section.

Smith
v
NJ

June 1, 1966

David I. Fox, Esq.
Fox, Yanoff & Fox
570 Broad Street
Newark, New Jersey

Dear David:

Thank you very much for your letter of May 27th. I am sorry about all the bother to which I have put you. Carl and I think that at this stage, particularly in view of the job involvement, it will be unnecessary to use the entire record. The appendix, which we used in the Supreme Court of New Jersey, will suffice. If, therefore, you will call the Clerk of the New Jersey Supreme Court and ask him to certify an appendix to the Supreme Court of the United States and follow his usual procedure. I believe that will suffice. I will probably send transcript down directly to the Supreme Court and so there will be nothing else for us to do (except, of course, to finish the petition for certiorari).

Thanks once more for all the bother. I hope to see you soon.

Cordially,

SMN:tp

Stephen M. Nagler
Associate to the General
Counsel

Albert X. Bader, Esq.
120 Broadway
New York, New York

June 2, 1966

Dear Mr. Bader:

Enclosed is reply brief which was before the Supreme Court of New Jersey in the Lou Smith case. I hope it will be useful.

Carl and I feel that it is particularly important that the incident inside the Council chamber and, for that matter, all of the events which followed, resulted from the conduct of Council President Walsh.

On the whole, how are you progressing? Is there anything which you need?

Very truly yours,

SMN:tp
Encl.

Stephen M. Nagler
Associate to the General
Counsel

Smith
v NJ

June 10, 1966

David I. Fox, Esq.
Fox, Yanoff & Fox, Esqs.
570 Broad Street
Newark, New Jersey 07102

Dear David:

The enclosed is the last extra copy of the appendix available at this time. I hope that you (or preferably the Clerk) can supply the cover.

Is it really necessary for us to supply this copy? Can't the Court certify one of the many copies in its possession?

Thaks again for all the bother. I know that you will proceed with due diligence (June 20th is the deadline).

Sincerely,

SMN/tp
Encl.

Stephen M. Nagler
Associate to the General
Counsel

June 16, 1966

Hon. John Davis, Esq.
Clerk,
Supreme Court of United States
Washington, D. C.

Dear Mr. Davis:

Enclosed please find the original and one copy of an application for an extension of time inwhich to file petition for a writ of certiorari in the case of State of *New Jersey* v. *Lou S. Smith et al*. We would appreciate your forwarding these papers to Mr. Justice Brennan for his consideration. A copy has been sent to the District Attorney of Mercer County simultaneously with a transmission of these papers.

Very truly yours,

CR/tp
Encl

Carl Rachlin
General Counsel

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C., 20543

June 20, 1966

JUN 22 1966

Carl Rachlin, Esquire
150 Nassau Street
New York, New York

RE: LOUIS S. SMITH, ET AL v.
NEW JERSEY
October Term, 1965

Dear Mr. Rachlin:

Your application for an extension of time in which to file a petition for writ of certiorari in the above-entitled case was presented to Mr. Justice Brennan, who on June 17th signed an order extending your time to and including July 19, 1966.

A copy of the Justice's order is enclosed and you should advise your adversary of its entry.

Very truly yours,

JOHN F. DAVIS, Clerk

By Edward C. Schade

E. C. Schade
Assistant

ECS:mk
Enclosure

Smith
v
N J

July 6, 1966

Albert X. Bader, Esq.
120 Broadway
New York, New York

Dear Mr. Bader:

Enclosed is the latest copy of the propsed petition. May I request unreasonably that you express your thoughts promptly. It is, of course, my practice to amend it still further and I would like your thoughts.

Kindest regards,

CR/tp
Encl.

Carl Rachlin
General Counsel

P.S. Mr. Rachlin has not had a chance to proofread this petition yet, and neither have I, so kindly excuse the mistakes.

Teena Potter
Secretary - Legal Dept.

July 15, 1966

Hon. John Davis, Esq.
Clerk, United States Supreme Court
Washington, D. C.

Dear Sir:

Enclosed please find a certified copy of the record used in the Supreme Court of the State of New Jersey in the case of People v. Lou Smith, et. al. A copy of the opinion of the New Jersey Supreme Court is attached. A petition for certiorari is being sent directly by the printer (Record Press) under separate cover. I appear as counselor of record.

Very truly yours,

Carl Rachlin
General Counsel

CR/vh

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C., 20543

July 19, 1966

JUL 21 1966

Carl Rachlin, Esq.
150 Nassau Street
New York, N. Y. 10038

RE: LOUIS S. SMITH, ET AL. v. NEW JERSEY
No. 357, October Term, 1966

Dear Mr. Rachlin:

The petition for a writ of certiorari in the above-entitled case was docketed in this Court on July 16, 1966, as No. 357, October Term, 1966. However, the petition does not contain an appendix as required by Rule 23(1)(i) and (j). Will you please have printed and forward to this office 40 copies of the opinion of the Supreme Court of New Jersey and the mandate on affirmance, so that we may insert them as an appendix at page 22 of your petition. Service of this appendix should be made on opposing counsel.

For future reference, please note Rule 39(2) which requires address of counsel on the cover of a petition for writ of certiorari.

Kindly complete both sides of the enclosed form for the entry of your appearance and return it to this office. Also enclosed is a form for notifying opposing counsel that the case was docketed. Proof of service of this notification is not necessary.

Very truly yours,

JOHN F. DAVIS, Clerk

By Jennie H. Lazowski

(Miss) Jennie H. Lazowski
Assistant

jmh
Enclosures

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C., 20543

October 10, 1966

RE: SMITH, ET AL. v. NEW JERSEY,
No. 357, Oct. Term, 1966

Dear Sir:

The Court today denied the petition for writ of certiorari in the above-entitled case.

Very truly yours,

JOHN F. DAVIS, Clerk
By
C. T. Lydden
Assistant

T. Vincent Panaro, Esq.
Prosecutor of Mercer County
Trenton, N. J.

[SAME TO ALBERT X. BADER, NY, NY]

October 19, 1966

David Fox, Esq.
570 Broad Street
Newark, New Jersey

Dear David:

Lou Smith et al. died last Tuesday of a denial of certiorari at the hands of the Supreme Court of the United States. The patient's last words were to thank you for the vital services you performed in his behalf. With the hope that the progeny will thrive nonetheless, let me add my thanks.

Sincerely,

Carl Rachlin
General Counsel

CR:ns

PHONES { 396-9145
396-9146

OFFICE OF THE COUNTY PROSECUTOR
MERCER COUNTY
COURT HOUSE
TRENTON, NEW JERSEY 08607

VINCENT PANARO
COUNTY PROSECUTOR
JOHN J. BARRY
FIRST ASSISTANT PROSECUTOR

ASSISTANT PROSECUTORS
EDWARD J. PHELAN
J. CHARLES POPKIN
BRYAN V. MOORE
GERALD P. HIGHAM
GIACOMO G. ROSATI

December 13, 1966

David I. Fox, Esquire
570 Broad Street
Newark, New Jersey

Re: Smith, Et Al. v. New Jersey,
No. 357, Oct. Term, 1966

Dear Mr. Fox:

Under date of October 10, 1966 John F. Davis, Clerk of the Supreme Court of the United States, advised me by letter that the Court denied the petition for Writ of Certiorari in the above entitled matter. An examination of the records of the Mercer County Clerk's Office, the Mercer County Probation Department and the records of the Municipal Court of the City of Trenton indicate that the fines imposed have not been satisfied of record. It is suggested that this matter receive immediate attention so that I might close out my file.

May I hear from you at your earliest convenience.

Very truly yours,

VINCENT PANARO
Mercer County Prosecutor

By: Edward J Phelan
EDWARD J. PHELAN
Assistant Prosecutor

VP:EJP
ib

FOX, YANOFF AND FOX
COUNSELLORS AT LAW
570 BROAD STREET
NEWARK, N. J. 07102

MARKET 2-3624

JACOB FOX
LEO YANOFF
MARTIN S. FOX
DAVID I. FOX

December 15, 1966

Carl Rachlin, Esq.
Scholarship, Education & Defense Fund
for Racial Equality, Inc.
150 Nassau Street
New York, N. Y. 10038

Dear Carl:

I thought, along with you, that Lou Smith etal died in October. However, it appears that even the U. S. Supreme Court can't kill the case.

Enclosed is a copy of the letter I have received from the Mercer County Prosecutor with regard to payment of the fines. What next!

Very truly yours,

DAVID I. FOX

DIF:RDF
Enc.

FOX, YANOFF AND FOX
COUNSELLORS AT LAW
570 BROAD STREET
NEWARK, N.J. 07102
MARKET 2-3824

JACOB FOX
LEO YANOFF
MARTIN S. FOX
DAVID I. FOX

#12860

December 15, 1966

Edward J. Phelan, Esq.
Assistant Prosecutor
Mercer County Court House
Trenton, New Jersey 08607

Dear Mr. Phelan: Re: Smith etal vs New Jersey
No. 357, Oct. Term 1966

I have sent a copy of your letter to the New York attorney who handled the above matter before the United States Supreme Court, who should be in a better position than I am to let us know about payment of the fines.

I will be in touch with you as soon as I receive an answer.

Very truly yours,

DAVID I. FOX

DIF:RDF

[illegible]

David [illegible] Fox, Esq.
Fox, Yanoff and Fox
570 Broad Street
Newark, New Jersey 07102

Re: [illegible]

Dear David:

Thank you for your letter of the 19th with [illegible] the outstanding [illegible] in the above [illegible]. [illegible] they are? Is it $100 apiece? [illegible] I do not [illegible] where the money will come from.

Lou Smith is in California, [illegible] is [illegible] New York. [illegible] is [illegible] in California and [illegible] the others are I don't know. [illegible] disappeared. I [illegible] there any possibility of [illegible] please let me know [illegible].

Many thanks again for your [illegible].

[illegible]

[illegible]
[illegible]

[illegible]

cc: [illegible]

JACOB FOX
LEO YANOFF
MARTIN S. FOX
DAVID I. FOX

570 BROAD STREET
NEWARK, N. J. 07102

MARKET 2-3624

December 27, 1966

Carl Rachlin, Esq.
General Counsel
Scholarship, Education & Defense Fund
150 Nassau St.
New York, N. Y . #10038

Dear Carl: Re: Smith vs New Jersey

The finds will not be remitted. It appears that the correct amount is $100.00 apiece.

Although it seemed to me that the Judge in the County Court ruled that the fines were higher, nevertheless, he sent me a letter which indicates that they are $100.00 apiece.

What can I tell the County Prosecutor with regard to payment?

Very truly yours,

DAVID I. FOX

DIF:RDF

Lo
Smith file

FOX, YANOFF AND FOX
COUNSELLORS AT LAW
570 BROAD STREET
NEWARK, N. J. 07102
MARKET 2-3624

JACOB FOX
LEO YANOFF
MARTIN S. FOX
DAVID I. FOX

September 13, 1967

Carl Rachlin, Esq.
150 Nassau Street
New York, N. Y. 10038

Re: State of New Jersey
vs. Louis S. Smith et. als.

Dear Carl:

Enclosed is a copy of a letter that I sent to one of the defendants in the above matter, who works for the State and could be seriously hurt if a Bench Warrant issues against her.

The prosecutor of Mercer County apparently moved the Bench Warrant for failure to pay fines against Callender and Lily Lewis. Judge Samuel Lenox of Mercer County was good enough to call me to tell me that he was about to issue the Warrants.

I was able to pursuade him to withhold the Warrant as to Mrs. Lewis. However, he has issued a Bench Warrant for the arrest of Herbert Callender. I don't know his address. I ask you to communicate this information to him and to advise him to get in touch with the prosecutor of Mercer County to pay the fine.

I don't know why Bench Warrants were not issued as to the other defendants since as far as I know they also have not paid their fines. I ask that you again notify them, if possible, of the importance of meeting this obligation which was imposed upon them after an eminently fair hearing.

Very truly yours,

David I. Fox

DIF:jba
Enc.

FOX, YANOFF AND FOX
COUNSELLORS AT LAW
570 BROAD STREET
NEWARK, N. J. 07102
MARKET 2-3624

JACOB FOX
LEO YANOFF
MARTIN S. FOX
DAVID I. FOX

C
O
P
Y

September 13, 1967

Mrs. Lily R. Lewis
46 Arden Avenue
Euing Township, New Jersey

Re: State
vs. Louis S. Smith et. als

Dear Mrs. Lewis:

As you probably know, the judgment of conviction in the above matter against you and the other defendants was not reversed by the United States Supreme Court. As a result, you are obliged to pay a $100 fine.

An application is pending to issue a Bench Warrant against you if the fine is not paid. This Warrant was supposed to be issued today but has been withheld to give you the opportunity to make payment.

I suggest you get in touch with the prosecutor of Mercer County to arrange for immediate payment.

Very truly yours,

David I. Fox

DIF:jba
CC: Carl Rachlin, Esq.
150 Nassau Street
New York, N. Y. 10038

[illegible]

Floyd B. McKissick, Esq.
National Director
Congress of Racial Equality
200 West 135th Street
New York, New York 10030

Dear Floyd;

Is it possible for [illegible] to attend [illegible]

possible ;

[illegible]

Stephen [illegible]

[illegible]/a
Enclosures (2)

[illegible] 1[illegible], 19[illegible]

Mr. [illegible] [illegible]
Training Department
[illegible]
[illegible] 3rd Avenue
New York, New York

Dear [illegible],

We are asking [illegible] to attend to this but we doubt if he will.

Very truly yours,

[illegible] [illegible]

[illegible]/s
Enclosure (1)

File
Smith
N.J.

September 21, 1967

Mr. Floyd McKissick,
Director, National Offices,
C.O.R.E., 38 Park Row,
New York, New York

Re: State of New Jersey
vs.
Louis S. Smith, Herbert E. Callender,
Marva L. Amis, Lily R. Lewis,
Williard D. Crittendon, Joyce L. Schurik.

Dear Mr. McKissick:

At the request of Mrs. Lily R. Lewis of this City, I am writing with respect to the above captioned matter. I enclose at this time photostatic copies of my correspondence to David I. Fox, Esquire and Mr. Fox's reply to me. Both letters I believe to be self-explanatory. Likewise, I enclose a copy of letter from the Clerk of the Supreme Court of the United States.

It would be appreciated if you would use your offices to expedite the payment of the outstanding fines against the above individuals.

Mrs. Lewis asked me to inform you that she is making payment of her fine directly to the Clerk of the Court. Hence, it will not be necessary for a remittance to be made on her behalf.

If you have any questions concerning this matter, it is suggested that you communicate with either Mr. David I. Fox, Esquire, 570 Broad Street, Newark, New Jersey 07102 or Carl Rachlin, Esquire, New York, New York.

The checks, in payment, should be made payable to the order of William H. Falcey, Clerk, Mercer County Court. May I hear from you at your earliest convenience.

Very truly yours,

VINCENT PANARO
Mercer County Prosecutor

VP:EJP
jb
Encls.

By:

Assistant Prosecutor Edward J. Phelan

From: CORE Legal Department

To: Leslie W. Finch, David I. Fox and Harold Braff.

Re: Trenton cases arising under:
Title 2A:170-29 Offensive language; molesting or interfering with persons.
1. Any person who utters loud and offensive or profane language in any place to which the public is invited; or
2. Any person who in any place, public or private,
   (a) Addresses or makes audible and offensive remarks to or concerning any passing person; or
   (b) Obstructs, molests or interferes with any person lawfully therein; or
3. Any person who telephones...etc.; or
4. Any person who repeatedly telephones...etc.,
   Is a disorderly person.

The defendants in the Trenton cases were convicted under § 2(b) (emphasis supplied above). The cases arise from two separate events:

(1) A "sit-down" in the Mayor's office;
(2) A "sit-down" outside the Trenton City Council meeting.

The convictions are subject to attack on several grounds. These fall into the following categories:

(1) Properly construed, the statute should not cover these offenses.

(2) The sit-downs were protected conduct under the First Amendment.

(3) The statute is unconstitutionally vague.

To better examine these arguments, a short analysis of the history of the statute may be helpful. The present section 170-29 (2(b)) was drawn from R.S. 2:202-7 in 1951; section 202-7 dealt with offenses by intoxicated persons as well as "any person". The new section added the term "molests" to "obstructs or interferes" and broadened the operation of this portion of the statute by changing " public places" to places "public or private". Prior to section 202-7, the offense was covered by section 3 of "An Act concerning disorderly persons," (June 14, 1898) found in Compiled Statutes at p. 1927. Under this section the offense of "obstructing or interfering" was similar to section 202-7.

1. PROPERLY CONSTRUED, THE STATUTE SHOULD NOT COVER THESE OFFENSES.

Determination of the scope of the statute depends not only on a determination of the words "obstruct or interfere", but also on a proper definition of "disorderly conduct" which gives breadth to the statute. An attempt to arrive at the meaning of these crucial terms follows:

(a) Disorderly Conduct.

Disorderly conduct is not an offense known to the common law, and can therefore exist only because of a statute so providing. State v. Labato, 7 NJ 137 (1951). We must therefore look elsewhere to find a proper interpretation. Unfortunately, the New Jersey cases arising under section 29 are few and most of the opinions are narrow holdings on narrow fact patterns. See State v. Burkitt, 120 NJL 393 (1938); State v. O'Donnell, 200 A. 739 (SupCt, 1938); Central Railroad Co. v. Simandl, 124 NJ Eq 207 (Ct of Chancery, 1938). Some of the cases do, however, give some indication of the meaning of the term by refusing to apply the statute in certain situations, although none of them make an effort to authoritatively interpret disorderly conduct. These cases generally assist the view that a narrow interpretation of the statute is called for. Thus, where the defendant was accused of using "loud and offensive" language, the court found that merely loud language was not enough and said that if merely loud language were criminal, it would broaden the meaning of disorderly conduct. State v. Mullen, 67 NJL 343 (1906). In Ruthenbeck v. First Criminal Judicial & c., 7 Misc 969 NJ Sup Ct, (1929) the defendant was convicted under section 3 of the Disorderly Persons Act for calling a police officer a "big muttonhead". The Court in declaring that this did not qualify as "loud and offensive" language, said, "It is not every trivial epithet addressed by one person tp another, even in the office of the clerk of the recorder's court and to a police officer doing desk duty there, that constitutes disorderly conduct."

In the case of Haywood v. Ryan, 5 NJL 116 (1913) the defendant was convicted of"obstructing or interfering" with traffic on a city street. He was being followed by a large crowd which completely blocked other pedestrians. The Court, in giving the statute a narrow interpretation, said that the provision was not intended to apply to those unintentionally blocking the street and that mere notoriety could not make one a disorderly person.

In New York the statute enumerating acts which constitute disorderly conduct (including "obstructing, interfering, etc,..in apublic place) describes the nature of such offenses as constituting or tending toward a "breach of the peace". The New York Court of Appeals said that in interpreting disorderly conduct offenses, the common law definition of breach of peace, "though not controlling is helpful in ascertaining the nature of the acts proscribed by the statute." People v. Carcel, 3 NY2d 327 (1957); People v. Most, 171 NY 423, 429. The New Jersey Supreme Court seems also to regard the definition of breach of the peace as helpful. State v. Labato, supra. In the Carcel case the New York Court of Appeals, citing People v. Most, supra, and Cantwell v. Connecticut, 310 US 296, 308, defined breach of thepeace as a"disturbance of public order by any act of violence or by any act likely to produce violence, or which by causing consternation and alarm disturbs the peace and quiet of the community." Without such a definition there are no outer limits to what may constitute "obstructing or interfering," and due process arguments arise because of the vagueness of the statute.

(b) "Obstructing or Interfering"

"Guided by this definition /of breach of peace/ the courts have indicated that something more than a mere incomvenviencing of pedestrians is required to support a conviction /for obstructing or interfering/." People v. Carcel, supra.

In People v. Nixon, 248 NY 182, 187-188, the Court took note of the fact that "men and women constantly congregate or walk upon th streets in groups, quite oblivious to the fact that to some degree they are thereby causing inconvenience to others using the street." In the Nixon case, the conduct determined not to be sufficiently "obstructive or interfering" was a parade in which defendants were marching four abreast and pedestrians were "just barely getting through." Yet, though defendants were certainly obstructing others, there was no breach of the peace, and hence no criminal conduct under the statute. It may be said as well of the defendants in the Trenton cases that they committed no "breach of the peace" and that they were certainly not "disorderly." Their peaceful action caused neither "violence," nor "the threat of violence," nor "alarm" nor a disturbance of the "peace and quiet of the community," nor, for that matter, did their action cause any more than an "inconvenience."

Other concepts of interference and obstruction are similar. In a New Mexico case it was said, with regard to pickets and lock-outs, etc., that "Every man's business is liable to be interfered with by the action of another, and yet no action lies for such 'interference.'" Hale v. Farmers' Electrical Membership Corp., 99 P2d 454. See also Henry v. Rock Hill, 376 US 776 (1964).

Against the construction presented above is a New Jersey lower court case, State v. Guillotte, 10 NJSuper 502 (1951), in which the Essex County Court found that one person who was moving about while distributing leaflets on a busy street corner was guilty of obstructing and interfering with pedestriabs under the provisions of section 202-7. The case is unreasonable in the breadth which it gives to the terms of the statute. If the statute was meant to be so limitless almost any sort of conduct (see People v. Nixon, supra) could be punished. On constitutional grounds, the case is nothing more than a "sport." See in particular Schneider v. Irvington, 308 US 147.

Let us, in summarizing, examine what should constitute "obstruction and interference". Apparently, the conduct should be more than a mere annoyance before it is allowed to fit within the terms of the Act. It should, in fact, constitute sp substantial a blockage as to be a "disturbance of the peace" as defined above. As to the cases arising outside the Council meeting, it seems fair to say that if the defendants had merely stood together in a group, no one would even have noticed them, though sitting down they became the objects of attention and arrest. This is so in spite of the fact that seated, they were no more of an obstruction than they would have been had they remained standing. As to the cases arising in the Mayor's office, it may be fairly deduced that this statute simply was not intended to apply. This is not a statute making it criminal to interfere with a public officer in the pursuance of his duties; Nor is this statute a"trespass"or a"loitering" measure. It seems, rather, that to such an extent as the statute may be valid, it is as a traffic regulation. But, as stated in Garner v. Loiusiana, 368 US 157 at 164, "...[We can not be concerned with whether the evidence proves the commission of some other crime for it is as much a denial of due process to send an accused to prison following conviction for a charge that was never made as it is to convict him upon a charge for which there is no evidence to support that . . . conviction." See also Cole v. Arkansas, 330 US 196, 201.

(c) Obstruction by onlookers

Although a crowd may have gathered around the defendants who sat down outside the Council meeting, and though the crowd may have obstructed others, it is immaterial to the charge of obstruction against the defendants. Haywood v. Ryan, 85 NJL 116 (1913); Henry v. Rock Hill, 376 US 776 (1964).

(d) Lawful presence in building

In both sets of Trenton cases, the defendants were arrested in places in which they had a right to be. The hall in which the Council meeting was held as well as the Mayor's office were both public places. Neither was closed.

In the cases arising outside the Council meeting the defendants' purpose was the"peaceful expression of unpopular views". In fact they were in a position similar in many respects to that of the defendants in the Edwards case. In Edwards, the defendants were on the state house grounds for the purpose of holding a peaceful demonstration. They were, like the defendants in the instant case, in a public place outside a public meeting, for an identical purpose. In Henry v. Rock Hill, supra, the facts are also similar. In fact, in the Henry case, the demonstration produced so much noise that the Council meeting going on inside was actually interfered with. As to the cases arising in the Mayor's office, the demonstrators were also engaged in the "peaceful expression of unpopular views", and here too an analogous case exists. If you consider that the Mayor's office is not as public as a street, the defendants were in the same position as those defendants in Garner v. Louisiana, who "sat-in" at a lunch counter with the tacit approval of the manager. Here, as in Garner, the defendants entered with the approval of the proprietor, (although in Garner approval was only implied) whose approval was later withdrawn. According to Mr. Justice

Harlan, "Petitioners' conduct with the management's implied consent, was a form of expression within the range of protections afforded by the Fourteenth Amendment," although other defendants who took their seats initially without approval are not so protected.

In many other cases, the rights of citizens to demonstrate peacefully in public places, has been upheld: People v. Remsen, 63 NYS 2d 860 (inside municipally owned airport); Taylor v. Louisiana, 370 US 154 (interstate bus waiting room).

(e) Other statutory factors - Each factor of the offense must be proved separately against each defendant.

Although the New Jersey disorderly persons statutes are "quasi-criminal", the "rules of the criminal law are applicable to prosecutions under the disorderly persons law." O'Regan & Schlosser, Criminal Laws of New Jersey , vol. 2, section 1787.

Disorderly conduct prosecutions involving more than one person can not be "jointly" conducted where the offenses are "several and distinct". In Handlin v. State, 16 NJL 96 (1837), a conviction for disturbing an assembly was overturned for this reason. In the Handlin case, a joint summons and complaint were used, joint offenses were charged, and the defendants were jointly convicted. This indicates that in both cases in which we are interested, there must be proof of"obstruction or interference" against each defendant. It must be shown that each defendant could actually be identified as an"obstructor" and how each defendant contributed to the obstruction. No general showing that defendants as a group formed an obstruction would be sufficient.

2. THE "SIT-DOWNS" WERE PROTECTED CONDUCT UNDER THE FIRST AMENDMENT.

The first part of this memorandum, particularly sections (a) and (b) dealt with reasons why the statute should not apply to the defendants in the Trenton cases. This part of the paper and part 3 will provide arguments leading to the conclusion that the statute may not constitutionally be applied in these cases,

In Thomas v. Collins, 323 US 516, 537, Mr Justice Rutledge clearly expressed the fact that "It is...in our tradition to allow the widest room for discussion,[and[the narrowest range for its restriction, particularly when the right is exercised in conjunction with peaceable assembly." Although the right to freedom of speech is not unlimited, it is "...protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance or unrest." Edwards v. South Carolina, supra at 236. The nature and extent of the powers of the state to impose limitations has been clarified in recent years. The state may, among other things, not pertinent here, make reasonable traffic regulations. Cox v. New Hampshire, 312 US 569. It could prevent persons from fprming "a cordon across the street" and allowing "no pedestrian to pass who did not accept a tendered leaflet." Schneider v. Irvington, supra at 160. But a state could not under a general statute which in its terms could include even the most harmless conduct, prevent incidental obstructions arising from the "peaceful expression of unpopular views." This is most clear in cases in which the extent of physical obstruction is not great, as in Cantwell v. Connecticut, where the objectionable act is committed by one person. But it is also clear that greater obstructions resulting from demonstrations are also allowed constitutional protection. Field v. South Carolina, 375 US 44; Henry v. Rock Hill, 376 US 776 (1964). In both cases the demonstrators' presence forced pedestrians off the sidewalk. The Henry case is of pertinence to the "sit-downs" in the Mayor's office since in Henry, the demonstrators sang so loud that all work in the City Hall was not only interfered with , but also completely disrupted.

In both of the Trenton cases, the demonstrators sat down quietly. They gave no grounds for fear that violence or any sort of major outbreak would occur. In the "Council" cases, furthermore, the possible hostility of observers did not detract from the "protected" nature of their acts. Edwards and Taylor cases, supra.

The fact that defendants were sitting down rather than picketing or marching does not in any way diminish the extent of their First Amendment protection. This is evident from the cases stemming from sit-in demonstrations at lunch counters. Most notably Mr. Justice Harlan's concurring opinion in Garner v. Louisiana, supra at 201:

> The Court has neverlimited the right to speak, a protected liberty under the Fourteenth Amendment...to mere verbal expression. The act of sitting at a privately owned lunch counter with the consent of the owner as a demonstration of opposition to enforced segregation, is surely within the same range of protections.

3. THE STATUTE IS UNCONSTITUTIONALLY VAGUE.

As stated in part 1, a literal interpretation of section 170-29(2[b]) as in State v. Guillotte, would apply the statute to the commonest varieties of conduct. Statutes capable of such interpretation are susceptible to attacks on grounds of vagueness on fact patterns of the same type as those in the Trenton cases.

In Cantwell v. Connecticut, 310 US 296, defendants convicted undera general breach of the peace statute for stopping pedestrians and playing a phonograph record containing "offensive" language, the Court said: "Although the contents of the [phonograph] record not unnaturally aroused animosity, we think that in the absence of a statute narrowly drawn to define and punish specific conduct as constituting a clear and present danger to a substantial interest of the state, the petitioner's communication, considered in the light of the constitutional guarentees, raised no such clear and present menace to public peace as to render him liable to conviction of the common law offense in question."

Although the New Jersey statute forbidding obstructing and interfering is broad, it is not a general breach of the peace statute. When such statutes are struck down it is usually, as in the Cantwell case, because they define no specific form of conduct. In the case of statutes in the nature of section 170-29(2[b]) a "type" of conduct is mentioned generally, but no standard is provided for determining the extent to which the conduct must be indulged in to be punishable. Thus, by analogy, if the general breach of peace statute is like a broad shallow hole, the New Jersey statute is like a narrow but deep trench, and into either the unwarned may fall though in pursuance of legitimate activities. Unlike the New Jersey statute, the New York statute provides both the broad, common law, "breach of the peace" standard and the more specific terminology ("obstructs, interferes,...etc."). See People v. Carcel, supra. If New Jersey places a "breach of peace" limitation, (such as that applied by New York, set forth in part 1) on "obstruct or interfere" the problem is alleviated. In such an event, however, the "peaceful expression of unpopular views" engaged in by the defendants in the Trenton cases, as well as other conduct undamaging to the well-being of the community, would need no protection against a vague statute.

If, on the other hand, the New Jersey courts fail to impose a reasonable limitation on the words "obstruct or interfere", it would, as now, be necessary to"speculate as to the meaning of penal statutes." Lanzetta v. New Jersey, 306 US 451.

MEMORANDUM FROM CORE LEGAL DEPARTMENT

To: DAVID I. FOX

Re: § 170-28 DISTURBING ASSEMBLIES

> Any person who by noisy or disorderly conduct disturbs or interferes with the quiet or good order of any place of assembly, public or private, including schools, churches, libraries and reading rooms, is a disorderly person.

The charge of disorderly conduct against Herbert Callender under §170-28 apparently arises from his comments at the Council meeting, in particular, his words, "We haven't done anything yet." It is unlikely that the charge could have arisen from the noise that resulted when he was dragged from the meeting, since, if that was the case, there would have been no basis for ordering his ejection. Furthermore, if he was not guilty of disorderly conduct prior to this time, his passive resistance to efforts to remove him gave rise to no offense. Harlan, J. in Garner v. Louisiana, 368 US 167 at 204 n.11; in which Mr. Justice Harlan said, "It follows of course that petitioners refusal to accede to the request to leave made by police officers could also not constitutionally be punished under the general statute. Were it otherwise, the determination whether certain conduct constitutes a clear and present danger would be delegated to a police officer. Simply by ordering a defendant to cease his "protected" activity, the officer could turn a continuation of that activity into a breach of the peace." Also see Thompson v. Louisville, 362 US 199.

The issues in this case therefore arise from Callender's words alluded to above. Basically, there are two questions posed: (1) Is this situation within the ambit of the statute? And if so (2) Was Callender's conduct nonetheless protected by the first amendment?

1. Is this situation within the ambit of the statute?

Under early common law it was a crime to disturb people gathered for religious worship. While the offense of disturbing a meeting may have had its origin in the policy of encouraging religious devotion, it was also a misdemeanor at early common law to wantonly disturb an assemblage of persons met together for any lawful purpose. American statutes, including that of New Jersey, generally were at first aimed solely at the protection of religious meetings. Most of these have been extended to shield all meetings from willful or tumultuous conduct of persons attempting to make a disturbance. In the case of the New Jersey statute, the original provision protecting religious meetings (first codified as Chapter 2:210) was combined in 1951 with measures protecting the peace of "libraries or reading rooms" (Chapter 2:202-11_ and "school property" (Chapter 2:202-12), and general words ("any place of assembly") were added.

It is now a familiar rule that "...statutes which in regulating conduct, may indirectly touch the area of freedom of expression should be construed narrowly where necessary to protect that freedom." Black, J. dissenting on other grounds in Bell v. Maryland, 378 US 226 at 325 (1964).

Both as to the nature of the meeting protected, and the nature of the conduct involved, a narrow interpretation of the statute is called for. This view is fortified by the fact that §170-29-1 provides sanctions against "loud and offensive or profane or indecent language in any...public place." In fact a reading of this section and the cases which have arisen thereunder, compared with the narrow range and small number of cases which have arisen under 170-28, gives the impression that it was an error to indict Callender under 170-28 at all. See Mullen v. State, 67 N.J.L 45 (1902) in which defendant was prosecuted for loud language at an election meeting in a school house.

(a) Character of the meeting.

In Hughes v. City of East Orange, 29 N.J.L.J. 343 (1906), the defendant was charged with disturbing a meeting of a congregation in its church while church business was being discussed. The court found that the meeting was not a religious function, but a business meeting, and thus not within the protection of the statute. The statute dealt only with religious assemblies, but the case involves a strict construction of the statute and indicates recognition of the view expressed above that statutes regulating free speech must be strictly construed.

Furthermore the case supports the view that the orientation of the places listed in the present statute ("schools, churches, libraries and reading rooms") is toward situations in which absolute silence or solemnity is expected, and a strict construction of the statute might limit the general words ("any place of assemby public or private") to like situations, thereby excluding this meeting which is not by nature one at which quiet was to be expected, from the operation of the statute. The rule of construction "Expressio unius est exclusio alterius", whereby the items specifically enumerated in the statute are regarded as indicating the scope which the Legislature intended to have, might also be applicable.

(b) The Nature of Conduct Constituting a Disturbance.

The courts have, in many states, made an effort to distinguish between those words or acts which constitute an unlawful disturbance and those which are protected speech.

This depends in large measure on the character of the meeting and the usage and practice governing such meetings. Certainly the statute might be intended to cover words spoken in a loud whisper at a library, but not words spoken even in loud tones at a meeting of dock workers. Furthermore, to constitute an unlawful disturbance the act must be inconsistent with the legitimate purpose of the assemblage, and though willful, it will not constitute an offense if it is done in the reasonable exercise of a right. 17 AmJur 219, 221; 2 Bishop, Criminal Law §309. Thus, singing hymns in a disturbing way was not a disturbance of a religious assembly (State v. Linkhow, 69 NCar 214 (1873); nor was repelling or denying statements by the speaker assailing defendant's character (Lovett v. State, 239 P. 274 Okla., 1925); nor was the interruption of a speaker to contradict his views (Gaddis v. State, 180 NW 590 (Neb., 1920)); nor was the showing of disapproval of entertainment by reasonable demonstrations such as hissing and booing (12 ALR 650, 656 et seq); nor stamping, shouting and a "religious harangue" outside the House of Assembly (Edwards v. South Carolina, 372 U.S. 229).

On the other hand, rude and profane disturbances of solemn functions (State v. Wright, 41 Ark 410) or even giggling and talking during a church service (Handlin v. State, 16 N.J.L. 96 (1837)) have been held to be disturbances under such statutes.

But the case which should be dispositive of the issues in our case is Mullen v. State of New Jersey Supra. In this case the defendant was accused of making "loud and offensive" comments and remarks to persons present at a "special election of voters in the Neptune City school house. He was convicted of disorderly conduct under §3 of the act concerning disorderly persons (Pamp. L. 1898 p. 343), an act in the nature of chapter 2A:170-29(1). After saying that the evidence showed only that the defendant's language was loud but not indecent (as required by the statute)the court said: (at 453)

> "If all who are loud and persistent in soliciting support for their candidates or views at public elections or school meetings are to be held disorderly persons, it will lead to a new view as to who are disorderly persons." (Emphasis supplied)

In the case with which we are concerned, the nature of the meeting was a public gathering called to discuss certain controversial issues. Without a doubt the "custom and usage" at such meetings envisions acceptable conduct far broader than that permitted at a church service. Indeed, the California Supreme Court through Traynor, J., has declared regarding meetings of exactly this sort, that "Speakers who express their opinions freely must run the risk of attracting opposition; they cannot expect their opponents to be silenced while they continue to speak freely." Payroll Guarantee Association v. Board of Education, 27 Cal 2d, 213 (1945).

2. Was Callender's conduct, nonetheless, protected by the First Amendment?

Even if the Court should determine that the statute is broader than has been claimed above, and that Callender's remarks fall within its scope, his comments would nonetheless be protected by the First Amendment. Not long ago the Supreme Court restated the long accepted doctrine that "It is in our tradition to allow the widest room for discussion (and) the narrowest range for its restriction, particularly when the right is exercised in conjunction with peaceable assembly." (Thomas v. Collins, 323 U.S. 516 at 530). These words express the general tenor of First Amendment protection particularly in situations of this sort. There are, of course, limitations on the nature of protected speech: Incitement to riot as in Feiner v. New York, 340 U.S. 315, "fighting words" as in Chaplinsky v. New Hampshire, 315 U.S. 568, and obscenities and indecencies are not within the scope of constitutionally protected liberties. Yet, on the whole, "...Any attempt to restrict these liberties must be justified by clear public interest, threatened not doubtfully or remotely, but by clear and present danger." Thomas v. Collins, supra. A mere annoyance is not enough. Thornhill v. Alabama, 310 U.S. 88 (1939). Giboney v. Empire, 336 U.S. 490 at 501,502. People v. Carcel, 3 N.Y. 2d, 327. Even if Callender's words at the meeting "stirred people to anger, invited public dispute, or brought about a condition of unrest. A conviction resting on any of these grounds may not stand." Terminiello v. Chicago 337 U.S. 1 at 5. Further, the statute becomes unconstitutionally vague if the court so interprets it.

In addition, the purpose of Callender's questions and his very presence at the meeting were in furtherance of a legitimate goal. Thornhill v. Alabama, 88 at 102, Sinn v. Tile Layers' Protective Union 301 U.S. at 478, supra, and other labor cases emphasixe the significance of a legitimate goal in upholding or rejecting a particular form of expression. Furthermore, as in the Edwards, Fields, Henry and Cantwell cases, his means of achieving that goal were through protected freedom of speech.

1) Academic Dipl - Flush Queens

2) Applied for receptionist Feb 1962

3) Bad record from Math class but was told she could be trained for I.B.M. at bank

4) Hours - 8:45 to 4:45 PM but was made to stay until after 4:45 until 5:45 if they proove and if still dont proove they will allow you to go until tommarrow because they dont pay overtime.

5) I.B.M. oper trans to 1403 encoding mach, back and forth with same salary Started $55. now mkg $80.00

6) If out 1 day within month that due for raise she wont get raise that month. 2 or 3 months later.

7) She was out 1wk & brought medical excuse They were supposed to consider that as one day and still she was penalized for the 5 days

8) She was called up to Mr Dutsell and he told her that if ~~a lot~~ she stayed another day she would be let go (8 days)

9) Grade 4 now. Trainee for 1 yr Grade 1 next raise grade 2, grade 3 next raise

10). She had 2 yrs typing in H.S. but was not asked if she wanted

11) She moves so much she build up production

12) They sent 4 whites girls to 1st floor in ticket tape and 1 of them has one yr.

13) Pay is higher (wire transfer)

14) Not once have they sent Negroe girls down to D level in vault as watchers.

I Mrs. Jo Ann Simmons

1) Miss Patricia Kelly and I came to the bank together but she was trained on Burrough mach. and I was not offerred the oppurtunity

2) Why cant I move also? She was told by Mr Frank Menders that they have "certain girls" that hold "certain positions" (Menders Unit Head)

3) She was told to see Mr. Peters (Sup.)

4) She ~~told~~ asked him why aren't the Negroe girls moved up into the other and better paying jobs. He told her that perhaps the Negroe girls dont qualify. ~~This was said~~ Mrs Simmons said "how do you know that they dont qualify if you dont give them oppur. for the job. She was then evaded by Mr Menders.

5) Herman B. (Unit Head), Sitting talking when there was no work, Mrs S. was told to "Shut up" and singled her out to do so among other white.

6) Mrs Simmons asked for early lunch and Mr Peters (Supervisor) told her no, do as everyone else" but he gave a white girl the lunch hour she wanted and she, Angela, came over to Mrs S. and "jokingly" stated HA! HA! "I got what I wanted". This incident occurred in May. 1965.
[redacted]

7) Mr. Peters used very harsh and insulting tones in his manner of speaking to Mrs. Simmons.

8) If there is no work very often Mrs Simmons is asked to do a facilitators job of checking for errors and provin and this is a grade 5 job. "

~~9) On the 4th & 5th floor there is one Negroe worker~~

9) She is told to look errors, roll tape or work as facilitators when there is no work and when she ~~asked~~ told Frank Menders that she was not a facilitator~~s~~ and he replied "that was beside the point". The work of a grade 5 is being done by grade 4.

~~10) Last winter in December Mrs S. asked to be changed to another machine~~

10) Mrs S. brought in a medical note to verify her statement ~~[illegible]~~ of her ~~of~~ sinus condition and it wasn't treated, she threatened to go to medical or stay out if ~~they~~ he did not allow her to change machines. This man who is her Unit Head (Herman B) April 1965

11) ~~8~~ Mr Ditsill (Chief) told her that if she was out another day she would be released. Out of the 8 days she was absent this year ~~[illegible]~~ days of the was covered by medical ~~[illegible]~~ notes a~~[illegible]~~ ~~[illegible]~~

12) Mr Ditstill replied that telling her this "was not his doings, he too had a boss".

13)

Mrs Simmons claims that she can do any ter job in the Dept, and she feels that she should upgraded or trained also for other positions just as the other employees who happened to be white.

Joan Simmons

Mrs Jo Ann Simson
131-35 Francis Lewis Blvd
Laurelton, L.I.

When I first came to the Federal Reserve Bk. I was applying for a receptionist job, there were no openings. Then I was confronted with the position I hold now. IBM Check Proof Operator.

I've been employed at the bk for 3½ years. I still hold the same position only now I'm an operator and at first I was only a trainee. I remained a trainee for a year or more.

I would like to change position but we are rated by our production. Lately my production has been going downhill. I'm not on the machine like I should be. I'm constantly be placed in different sections so there fore I can't put out the proper amount of

What kind of illness?

production.

I've been warned about absences. I was told if I were to stay off from work another day they'd have to let me go.

Each time I've been out from work I've brought in a note from my doctor stating the reasons for my being out. I've been absent 8 or 9 days this year. a complete week and two days here and there.

As far as positions. They've had quite a few openings in coupons & saving dept. The supervisors have to pick the girls out to send downstairs to the first floor. How they go about selecting the girl I don't know, but they've selected to send ~~[illegible]~~ few if any Negro Girls down stairs.

I feel that I'm being
cheated in certain respect
one of the girls they sent to
this Dept. have only been
employed there for 1½ or 2
years the most. I've been
there for 3½ years and
still hold the same position

2/62 came to Bank

1)

POINT I {Copy contents

AS INDICATED ~~SET OUT~~ ~~PREVIOUSLY~~ IN THE STATEMENT OF FACTS ~~THE MEETING~~ (INFRA), THIS WAS A PUBLIC MEETING OF A POLITICAL BODY CALLED TO DISCUSS A CONTROVERSIAL, ~~E~~ EMOTIONALLY CHARGED SUBJECT. IT IS PLAIN FROM THE NATURE AND QUANTITY OF NOISE AT THE MEETING THAT MR. CALLENDER AND MOST OF THE AUDIENCE, ~~ON THE ONE HAND~~, DIFFERED FROM COUNCIL PRESIDENT WALSH, ~~ON THE OTHER HAND~~ AND THAT THROUGH THE HARRASSMENT OF SPEAKERS AND ~~HIS OFFICE~~ THE PREROGATIVES OF HIS ~~OFFICE~~ POSITION THE COUNCIL PRESIDENT DID HIS BEST TO SILENCE ~~CALLENDER~~ OPPOSITION. HERBERT CALLENDER ROSE TO ~~DEFEND HIMSELF~~ ~~DENY H~~ EXPRESS HIMSELF AND WALSH ATTEMPTED TO USE THE LAW TO SILENCE HIM.

THE EVIDENCE SHOWS THAT MANY PEOPLE TRIED TO PROTEST THE

MISTREATMENT OF ODELL BRADLEY, AND THE [redacted] ATTITUDE OF THE COUNCIL PRESIDENT IN GENERAL. CALLENDER SPOKE FEWER THAN SEVEN WORDS, TO SUGGEST THAT THE WORDS "WE HAVEN'T DONE ANYTHING WRONG YET" (OR WORDS TO THAT EFFECT) COULD CONSTITUTE DISORDERLY CONDUCT WOULD BE A GRIEVOUS ERROR. WHEN VIEWED IN THE CONTEXT OF A POLITICAL MEETING IT BECOMES AN IMPOSSIBILITY. MULLEN V. STATE, [redacted] 67 NJL 451 (1906); PAYROLL GUARENTEE ASSOCIATION V. BOARD OF EDUCATION, 27 CAL 2d 197 (1945).

IN THE LATTER CASE, THE [redacted] COURT SAID (AT 213):

> "SPEAKERS WHO EXPRESS THEIR OPINIONS FREELY RUN THE RISK OF ATTRACTING OPPOSITION; THEY CANNOT EXPECT THEIR OPPONENTS TO BE SILENCED WHILE THEY CONTINUE TO SPEAK FREELY."

THEREFORE IN SO FAR AS THE TRIAL COURT'S DETERMINATION REGARDING THE WORDS SPOKEN BY MR CALLENDER IS CONCERNED, ~~THEREFORE~~,

~~THEREFORE, THE DECISION OF THE TRIAL COURT WAS~~

THE JUDGMENT WAS CORRECT (D___a). NOTHING DONE BY MR CALLENDER PRIOR TO THE ORDER THAT HE BE REMOVED MERITED [redacted] PUNITIVE MEASURES.

THE ISSUE THEREFORE IS WHETHER A PERSON'S EJECTION FROM A PUBLIC MEETING CAN CONSTITUTE AN OFFENSE [redacted] WHERE THE PERSON [redacted] IS COMPLETELY PASSIVE WHILE BEING [redacted] REMOVED, AND WHERE HIS REMOVAL IS ITSELF WRONGFUL.

A. ~~~~~~~~

(1) THE NOISE CREATED BY DEFENDANT COLLENDER'S AS IT WAS CARRIED OUT OF THE ROOM WAS THE BASIS FOR CONVICTING HIM OF DISTURBING THE MEETING.

THE ONLY WILLFUL ACT WHICH OCCURRED AT THIS ~~[illegible]~~ ~~AT THIS TIME~~ JUNCTURE, WAS THAT OF THE POLICE OFFICERS IN REMOVING CALLENDER FROM THE MEETING IN VIOLATION OF HIS RIGHT TO PETITION, FREEDOM OF ASSEMBLY AND FREEDOM OF SPEECH. ~~[illegible]~~ FURTHERMORE SINCE THE COURT FOUND THAT CALLENDER WAS GUILTY OF NO WRONGDOING PRIOR TO THE ORDER THAT HE BE REMOVED, THERE WAS NO REASONABLE BASIS FOR ORDERING HIS REMOVAL, AND HIS PASSIVE SILENT NON-COOPERATION, WITH THE EFFORTS TO REMOVE HIM GAVE RISE TO NO OFFENSE. IN *GARNER* V. *LOUISIANA*, 368 US 167, 82 S CT 248 (1951), MR JUSTICE HARLAN SAID (AT 204 N. 11):

> "IT FOLLOWS, OF COURSE THAT PETITIONERS' REFUSAL TO ACCEDE TO THE REQUEST TO LEAVE

Insert I ~~It has frequently been said that~~ In order to establish the offense of disturbing a meeting it must be shown that the acts constituting the offense were intentional. Lancaster v. State, 53 Ala. 398, 25 Am Rep 625 (1875); State v. Linkhaw, 69 N.C. 214, 12 Am Rep 645 (   ); Brown v. State, 46 Ala. 175 (18). Although not stated in the statute per se, intent is an element of offenses under the Disorderly Persons Act. Haywood v. Ryan, 85 N.J. L 116 (   ).

In Brown v. State, Supra, the defendant lay down on a bench in a church. The bench creaked whenever he moved. In reversing the conviction the court held that the defendant was guilty of willful disturbance.

JUNCTURE, WAS THAT OF THE POLICE OFFICERS IN

THE MEETING IN VIOLATION

MADE BY POLICE OFFICERS COULD ALSO NOT CONSTITUTIONALLY BE PUNISHED UNDER THE GENERAL STATUTE. WERE IT OTHERWISE, THE DETERMINATION WHETHER CERTAIN CONDUCT CONSTITUTES A CLEAR AND PRESENT DANGER WOULD BE DELEGATED TO A POLICE OFFICER. SIMPLY BY ORDERING A DEFENDANT TO CEASE HIS PROTECTED ACTIVITY, THE OFFICER COULD TURN A CONTINUATION OF THAT ACTIVITY INTO A BREACH OF THE PEACE." [EMPHASIS SUPPLIED].

THE INACTIVITY OF DEFENDANT CALLENDER [redacted] ALSO INDICATES THE ABSENCE OF THE CRUCIAL ELEMENT OF INTENT. [INSERT pg 9; " ~~IT HAS ... TO P.10 ... NO WILLFUL~~ [redacted]].

~~Furthermore, the case supports the view that~~ The orientation of the places listed in ~~the present statute~~ NJSA (1952) CHAP. 2A:170-28 ("schools, churches, libraries and reading rooms") is toward situations in which absolute silence or solemnity is expected, and a strict construction of the statute ~~might~~ limits the general words ("any place of assembly public or private") to A CLASS OF like situations. ~~thereby excluding~~ This meeting which is not by nature one at which quiet was to be expected, MUST BE EXCLUDED from the operation of the statute. INDEED ~~[illegible]~~ IF THE LIST ~~[illegible]~~ OF "SCHOOLS, CHURCHES, LIBRARIES In other words only such places of assembly (places of complete silence) which are "ejusdem generis", with the places enumerated and the uniform nature of the places enumerated in the statute are regarded as indicating the scope which the Legislature intended the statute to have.

[INSERT]

A political meeting at which controversial matters are discussed, and at which noise is to be expected is not within the intendment of a statute in which the Legislature has seen fit to enumerate "schools, churches, libraries and reading rooms" as examples of the "places of assembly" protected from "noisy or disorderly conduct." ~~It must be assumed that~~ THE LEGISLATURE WOULD EXPECT SUCH MEETINGS TO BE "NOISY."

AND READING ROOMS" WITHIN THE BODY OF THE STATUTE WAS NOT FOR THE PURPOSE OF LIMITING THE OPERATION OF THE STATUTE TO THE CLASS ~~OF~~ [illegible] OF "SILENCE" SITUATIONS, THE WORDS SERVE NO PURPOSE WHATSOEVER,

_IN RE_ _ARMOUR'S_ _ESTATE_, 11 NJ 257, 94 A2d 293 (1953)

(2) Traditional RULES OF CONSTRUCT. { See Contents }

~~AFTER STATING IN~~ [illegible] ~~NJSA (1952) CHAP 2A:~~
~~170-28~~ ~~THE TERMS:~~ [illegible] [illegible] ~~"ANY PLACE OF ASSEMBLY, PUBLIC OR~~
~~PRIVATE"~~ ~~THE ORIENTATION OF THE PLACES ENUMERATED~~ [illegible]
~~IN THE NJSA (1962) CHAP 2A:170-28 ("SCHOOLS, CHURCHES,~~
~~LIBRARIES & READING ROOMS")~~

~~SUCH AN~~ THIS INTERPRETATION OF ~~[illegible] STATUTE~~ THE STATUTE REFLECTS THE COMMON LAW HISTORY OF "DISTURBING ASSEMBLIES." ~~AT COMMON~~

At ~~Under early~~ common law it was a crime to disturb people gathered for religious worship, ~~for~~ 4 Blackstone, *Commentaries on the Laws of England*, ~~Vol. IV~~ *Of Public Wrongs*, (Beacon Press, 1962) pp. 54, 55. THE offense of disturbing a religious meeting had its origin in the policy of removing disabilities first from Protestant dissenters and later Catholics and Jews, and protecting their freedom of religious expression and their right to hold meetings unmolested. *Rex. v. Wroughton*, 3 Burr 1683; 52 Geo. III 1812 CH 155§12)

~~LATER~~ THIS PROTECTION WAS EXTENDED TO PROTECT THE FREEDOM OF ASSEMBLY OF PEOPLE ~~[illegible]~~ AT BENEVOLENT GATHERINGS OF OTHER SORTS. ~~IT WAS~~ IS INTERESTING THAT A STATUTE ~~[illegible]~~ ARISING FROM THE ~~DEVELOPMENT OF A~~ DEVELOPING TRADITION OF FREE ASSEMBLY AND FREE

EXPRESSION, HAS HERE BEEN USED TO STIFLE SUCH EXPRESSION. AMERICAN STATUTES ~~FIRST~~ GREW FROM ~~THIS TRADITION~~ THE COMMON LAW PROTECTION OF PEOPLE ENGAGED IN RELIGIOUS WORSHIP. MANY OF THEM EXPANDED TO COVER MEETINGS OF DIFFERENT SORTS, ~~THESE REFLECT~~ BUT THESE LIKE THE LATER COMMON TRADITIONS ~~DEALT ONLY WITH~~ HAVE USUALLY BEEN LIMITED TO WANTON OR TUMULTUOUS CONDUCT OF DISRUPTIVE PARTIES. 2 WHARTON'S CRIMINAL LAW & PROCEDURE (ANDERSON, 1957) § 813; *CAMPBELL* V. *COMMONWEALTH*, 59 PA 266 (1868); *COMMONWEALTH* V. *HOXEY*, 16 MASS 385 (1820); 3 BURDICK, *LAW OF CRIMES*, (1946) § 766 P 129.

THE NEW JERSEY STATUTE ~~CLEARLY REFLECTS~~ IN ITS ENUMERATION OF "QUIET SITUATIONS" CLEARLY REFLECTS THE OLDER, TRADITIONAL COMMON LAW LIMITATION. ~~AND WHICH DID NOT INCLUDE~~ IT IS UNREASONABLE TO ASSUME THAT MEETINGS OF A CONTROVERSIAL POLITICAL NATURE ARE COMPREHENDED WITHIN ~~[illegible]~~ ITS FRAMEWORK.

2 -

> "...very great indignities to the Divine Majesty." 2 Russell on Crime (Turner 1917), ~~vol. 2~~, pp. 15, 25.

Thus, FOR EXAMPLE, to impose the same standards of conduct on mere spectators at a baseball game as would be imposed on users of library facilities would be ludicrous, and to impose a standard of silence on persons attending a political meeting at which controversial issues were discussed and feelings ran high, would violate even the narrowest concept of free speech.

In ~~other~~ jurisdictions, in which the statutes do not contain an enumeration of "quiet situations" ~~and at common law, where no such limitation existed, the courts have attempted to distinguish between those words or acts which~~ WHAT constitutes an unlawful disturbance ~~and those which are protected speech. This~~ depends in large measure on the character of the meeting and the usage and practice governing such meetings. Commonwealth v. Porter, 1 Gray (Mass.) 476. (1820); 2 Wharton, Supra at P. 674; Jackson v. State, 21 Ga. App 779, 95 SE 302 (   ); State v. Dahlstrom, 90 Minn. 72, 95 N.W. 580 (   ); Gaddis v. State, 105 Neb. 303, 180 NW 590, 12 ALR 648 (   ). It has been said, for example, that mere words or acts which if they happened elsewhere, would not be punishable at all and might even be commendable WHEN occurring in churches have been punished as:

~~[illegible]~~ IN FACT ~~UNDER THESE~~ BY THIS STANDARD TO VIOLATE ~~[illegible]~~ THE SANCTITY OF A ~~[illegible]~~ ~~[illegible]~~ NOISY AND EXCITED GATHERING, ~~[illegible]~~ A SUBSTANTIAL BREACH OF THE PEACE, WOULD BE REQUIRED BEFORE ~~[illegible]~~ PUNISHMENT COULD BE ~~METED OUT,~~ ~~[illegible]~~ JUSTIFIED. ~~GADDIS V. STATE~~ COMMONWEALTH V. HOXEY, SUPRA.

THE INCIDENTAL NOISE CREATED BY THE BUMPING OF A LIMP BODY AS IT WAS DRAGGED OUT OF A ROOM COULD HARDLY BE CALLED A BREACH OF THE PEACE UNDER ANY ~~[illegible]~~ CIRCUMSTANCES. ~~[illegible]~~M.

~~EVEN [illegible] AT A QUIETER GATHERING,~~

(B) {See Contents.}

~~THE SUPREME COURT HAS OFTEN~~

THE DOCTRINE IS WELL ESTABLISHED THAT:

"IT IS IN OUR TRADITION TO ALLOW THE WIDEST ROOM FOR DISCUSSION {AND} THE NARROWEST RANGE FOR ITS RESTRICTION, PARTICULARLY WHEN THE RIGHT IS EXERCISED IN CONJUNCTION WITH PEACEABLE ASSEMBLY." THOMAS v. COLLINS, 323 U.S. 516 AT 530.

THESE WORDS EXPRESS THE GENERAL TENOR OF FIRST AMENDMENT PROTECTION PARTICULARLY IN SITUATIONS OF THE SORT INVOLVED HERE.

~~(1) ON ITS FACE~~

~~THE CONSTITUTION FIRST AMENDMENT PROTECTION~~

~~OF FREE SPEECH~~

1. ON ITS FACE

IF NJSA (1952) CHAP 2A: 170-28 IS LIMITED, AS HAS BEEN INDICATED ABOVE, TO "QUIET MEETINGS" OR IF IT IS HELD THAT THE "CUSTOM AND USAGE" AS ~~SUCH~~ MEETINGS OF THE SORT INVOLVED HERE, REQUIRES ~~AN~~ ACTIVE I~~S BEYOND THE~~ BREACH OF THE PEACE FAR BEYOND THE PASSIVITY ~~PASSIVITY OF~~ OF MR CALLENDER, THEN NO CONSTITUTIONAL PROBLEM ARISES.

BUT IF ~~THE COURT~~ THE STATUTE APPLIES TO ANY NOISE, EVEN INVOLUNTARY, AT POLITICAL ~~MEET~~ AND OTHER "NOISY" MEETINGS, IT VIOLATES THE FIRST AMENDMENT PROTECTIONS OF FREE SPEECH, FREE ASSEMBLY AND THE RIGHT TO PETITION.

~~IN EDWARDS V. SOUTH CAROLINA~~, ~~COX V. LOUISIANA~~,
~~IN HENRY~~

FAR MORE NARROW~~LY~~ DRAWN STATUTES THAN THAT OF NEW JERSEY HAVE, IN FACT, BEEN FOUND UNCONSTITUTIONAL INFRINGEMENTS ON THE RIGHTS OF DEMONSTRATORS IN SITUATIONS IN WHICH FAR MORE NOISE AND DISTURBANCE HAS BEEN CREATED THAN IN THE PRESENT CASE, *EDWARDS* v. *SOUTH CAROLINA*, ___ US ___, ___ SCt ___ (19); *HENRY* v. *ROCK HILL*, ___ US ___, ___ SCt ___ (1964); *FIELDS* v. *SOUTH CAROLINA*, ___ US ___, ___ SCt ___ (196_); *COX* v. *LOUISIANA* ___ US ___, ___ SCt ___ (1965).

IN FACT, THESE CASES HAVE HELD THAT THE FAILURE OF "DISORDERLY CONDUCT" STATUTE TO HAVE A BREACH OF THE PEACE LIMITATION ~~CONSTITUTES~~ RENDERS THE STATUTE UNCONSTITUTIONALLY VAGUE, *COX* v. *LOUISIANA*, *SUPRA*.

~~(2) As Applied~~

(2) *As Applied*

Callender's ~~[illegible]~~ very presence at the meeting was in furtherance of a legitimate goal, *Thornhill* v. Alabama, ___ US ___, ___ S Ct ___ ~~at~~ & ( ) ~~at 102~~; *Sinn* v. *Tile Layers' Protective Union*, 301 US ___, ___ S Ct ___ (19__ _). ~~[illegible] other~~ His means of achieving that goal were through protected speech. [Edwards, Fields, Henry, Cantwell, Cox]. That the statute could be used to silence Callender and is a violation of his ~~right~~ free speech. That a continuance of Callender's constitutionally protected conduct could be punished by application of a statute protecting peaceful assemblies, is an unconstitutional

APPLICATION OF THE STATUTE. GARNER V. LOUISIANA, SUPRA. CANTWELL V. CONNECTICUT, SUPRA.

PO~~INT 7.~~ ~~THE CONVICTION~~ OF DEFENDANT CALLENDAR ~~UNDER § 170.29(2)(b) FOR REMAINING WHERE THE POLICE PLACED HIM VIOLATES DUE PROCESS.~~

The approach taken by the police to the defendants in these cases is clearly illustrated by the case against

defendant Callendar. Police witnesses stated consistently that Mr. Callendar remained on the spot on which he had been placed (D. ________ 4.). Yet he was arrested and charged with obstructing the entrance to the Council Chamber for doing no more than that. His conviction for the "novel" crime of being where a police officer had placed him is evidently UNJUSTIFIABLE, PARTICULARLY IN VIEW OF ~~violative of~~ the "due process" clause of the Fourteenth Amendment. THE SITUATION IS ~~MUCH LIKE~~ FAR BEYOND THAT IN THE SECOND COX CASE (COX V. LOUISIANA, __ US __, 85 SCt. 476 (1965)), IN WHICH THE DEFENDANT WAS CONVICTED OF "PICKETING NEAR A COURTHOUSE" (~~LOUISIANA~~ LSA— REV. STAT. §14:1401 (CUM. SUPP. 1962) BECAUSE HE LED A GROUP OF PICKETS ~~TO A~~ TO THE STREET OPPOSITE THE COURTHOUSE, AFTER THE POLICE DIRECTED HIM TO DO SO:

"As in Raley, [Raley v. Ohio 360 U.S. 423, 79 S. Ct. 1257 (   )], under all the circumstances of this case, after the public officials acted as they did, to sustain appellant's later conviction for demonstrating where they told him he could 'would be to sanction an indefensible sort of entrapment by the State—convicting ~~a~~ a citizen for exercising a privilege which the State had clearly told him was available to him.' Id. at 426, 79 S.Ct at 1260. The Due Process Clause does not permit convictions to be obtained under such circumstances." Id. at 484.

defendant Callendar. Police witnesses stated consistently that Mr. Callendar remained on the spot which he had been placed (D. ________ A.). Yet he was arrested and charged with obstructing the entrance to the Council Chamber for doing no more than that. His conviction for the "novel" crime of being where a police officer had placed him is evidently unjustifiable, particularly in view of THE FACT THAT CALLENDER WAS IN THE CUSTODY OF THE POLICE AS HE SAT WHERE THEY HAD ~~been~~ PLACED HIM. FURTHERMORE IT VIOLATES ~~violative of~~ the "due process" clause of the Fourteenth Amendment.

THE SITUATION IS ~~much like~~ FAR BEYOND THAT IN THE SECOND Cox CASE (Cox v. Louisiana __ US __, 85 S.Ct. 476 (1965)), IN WHICH THE DEFENDANT WAS CONVICTED OF "PICKETING NEAR A COURTHOUSE" (~~Louisiana~~ LSA–REV. STAT. §14:401 (CUM SUPP. 1962)) BECAUSE HE LED A GROUP OF PICKETS TO THE STREET OPPOSITE THE COURTHOUSE, AFTER THE POLICE DIRECTED HIM TO DO SO:

"As in Raley, [Raley v. Ohio 360 U.S. 423, 79 S.Ct. 1257 ( )], under all the circumstances of this case, after the public officials acted as they did, to sustain appellant's later conviction for demonstrating where they told him he could 'would be to sanction an indefensible sort of entrapment by the State—convicting a citizen for exercising a privilege which the State had clearly told him was available to him.' Id. at 426, 79 S.Ct at 1260. The Due Process Clause does not permit convictions to be obtained under such circumstances." Id. at 487.

POINT II ________

A ________ {See Contents}.

~~THE APPROACH TAKEN~~

B ____________

1. THE CONVICTION OF ALL DEFENDANTS WAS AGAINST THE WEIGHT OF THE EVIDENCE.

THE RECORD REVEALS THAT THE ONLY PERSON WHO MAY IN ANY WAY HAVE BEEN INCONVENIENCED BY THE PRESENCE OF THE DEFENDANTS SEATED OUTSIDE THE COUNCIL CHAMBER WAS ~~[illegible]~~ MR. MAZIARZ, THE CLERK OF THE CITY COUNCIL. THE STATUTE WHICH THE DEFENDANTS WERE FOUND TO HAVE VIOLATED, REQUIRES THAT "PERSONS LAWFULLY THEREIN" BE OBSTRUCTED. ~~AS~~ ~~ONLY~~ SINCE ONLY ONE PERSON CLAIMED THAT HE WAS OBSTRUCTED (MR MAZIARZ) AND SINCE ~~THE POLICE~~ HE STATED THAT NO ONE ELSE WAS SEEN ENTERING OR LEAVING THE COUNCIL CHAMBER OR THAT EITHER MR MAZIARZ OR ANYONE ELSE FOUND IT NECESSARY TO ASK THAT A PATH BE CLEARED, THE ~~DEFENDANTS~~ STATE FAILED TO PROVE THAT "PERSONS"

WERE OBSTRUCTED, AS THE STATUTE REQUIRES, ~~FURTHERMORE~~

IT ALSO ~~FURTHER~~ APPEARS FROM THE RECORD (D________ a) THAT AFTER THE DEFENDANTS HAD SAT DOWN OUTSIDE THE COUNCIL CHAMBER THEY WERE TOLD ~~THAT THEY~~ (EXCEPT MR. CALLENDER) THAT THEY COULD LEAVE. SINCE IT WAS DEEMED BY THE POLICE THAT THEIR CONDUCT PRIOR TO THIS POINT WAS NOT WORTHY OF ARREST AND SINCE THERE IS NO INDICATION IN THE RECORD THAT THEY SUBSEQUENTLY BEHAVED DIFFERENTLY, IT APPEARS THAT THERE WAS NO BASIS FOR THEIR ARREST OR THEIR CONVICTION. FURTHERMORE, THE ORDER THAT DEFENDANTS LEAVE THE BUILDING VIOLATED THEIR RIGHT TO REMAIN FOR THE PURPOSE OF EITHER RE-ENTERING THE CHAMBER OR STAYING TO OBSERVE THE OUTCOME OF THEIR ~~FRIEND'S~~ ASSOCIATE'S ARREST.

INDEED, IF DEFENDANTS HAD STOOD RATHER THAN SAT WHERE THEY DID, THEY WOULD NOT EVEN HAVE BEEN THE OBJECT OF ATTENTION, MUCH LESS ARREST, ALTHOUGH STANDING THEY WOULD HAVE BEEN NO LESS A BARRIER THAN SITTING.

IN ADDITION, THE CONDUCT OF THE DEFENDANTS GIVES NO INFERENCE OF AN INTENT TO OBSTRUCT ANYONE. ~~INFERENCES OF EITHER AN INNOCENT~~ WITHOUT FAR MORE THAN APPEARS ON THE RECORD, NO INFERENCE OF A GUILTY INTENT CAN BE INFERRED.

IN ALL OF THE ABOVE RESPECTS, THE STATE FAILED TO PROVE THE GUILT OF THE DEFENDANTS BEYOND A REASONABLE DOUBT.

all, each defendant obstructed. No general showing that defendants were a group some of whom may have formed an obstruction would be sufficient. None of the witnesses at the trial, however, were able to authoritatively identify which defendants obstructed the entrance to the City Council Chamber (D. ____ a.) and the Court made no effort to examine the manner in which each defendant contributed, separately and distinctly, IF AT ALL to the obstruction, ~~if at all~~ (D. ____ a.).

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Copy of Point II

Although the New Jersey disorderly persons statutes are "quasi-criminal", the "Rules of the criminal law are applicable to prosecutions under the disorderly persons law." O'Regan & Schlosser, Criminal Laws of New Jersey, vol. 2, section 1787. State v. Labato, 7 NJ 137 (1951); State v. Rodgers 91 NJL 212 (E. & A. 1917).

Disorderly ~~conduct~~ PERSONS prosecutions involving more than one person can not be "jointly" conducted where the offenses are "several and distinct". In Handlin v. State, 16 NJL 96 (1837), a conviction under § 170:28 for disturbing an assembly was overturned for this reason. In the Handlin case, a joint summons and complaint was used, joint offenses were charged, and the defendants were jointly convicted. In the present case, too, proof of "obstruction or interference" against each defendant, should be required. It must be shown that each defendant could actually be identified as an "obstructor" and how, if at

(2) DEFENDANTS WERE GUILTY OF NO OBSTRUCTION ~~WITHIN THE TERMS OF~~ COGNIZABLE BY THE STATUTE.

THE ONLY PERSON WHO IN ANY WAY CLAIMED TO HAVE BEEN IMPEDED BY THE PRESENCE OF THE DEFENDANTS OUTSIDE THE COUNCIL CHAMBER WAS MR MAZIARZ, ~~HE CLAIMED~~ AND HE ONLY CLAIMED TO HAVE BEEN DELAYED FOR "LESS THAN A MINUTE" (D_____a). FURTHERMORE, THERE IS NO INDICATION THAT HE ASKED ANYONE WHO MIGHT IN ANY WAY HAVE BEEN BLOCKING HIM TO MOVE OUT OF HIS WAY.

THIS MEANS THAT NO PERSON WAS IN ANY WAY INTERFERED WITH BEYOND THE MERE INCONVENIENCING OF MR MAZIARZ. THE STATUTE SHOULD NOT TAKE cognizance of mere "inconveniences." People v. Nixon, 248 NY 182, 161 NE 463 (1928). Thus only such obstructions which constitute disorderly conduct are punishable. ~~The term is~~ In the Nixon case, supra, the New York Court of Appeals noted that: ~~people standing in small groups upon the street tend, [illegible] to obstruct others without ever having second thoughts~~

> "Men and women constantly congregate or walk upon the streets in groups, quite oblivious to the fact that to some degree they are thereby causing inconvenience to others using the street."

Such "obstructions" are not cognizable by the Court, because, ~~there is~~ ~~[illegible]~~ they do not constitute disorderly conduct or breach the

PEACE.

EVEN IN CASES IN WHICH THERE WAS A REAL OBSTRUCTION BY ACTIVE CONDUCT AS IN THE NIXON CASE WHERE THE DEFENDANTS WERE ARRESTED FOR MARCHING ALONG THE STREET FOUR ABREAST AND PEDESTRIANS WERE "JUST BARELY GETTING THROUGH," THERE WAS NO DISORDERLY CONDUCT AND NO BREACH OF THE PEACE, AND HENCE, NO PUNISHABLE ACT. ~~WHICH~~ A BREACH OF THE PEACE HAS BEEN DEFINED ~~IN THIS CASE~~ AS A:

> "... DISTURBANCE OF PUBLIC ORDER BY AN ACT OF VIOLENCE OR BY ANY ACT LIKELY TO PRODUCE VIOLENCE, OR WHICH BY CAUSING CONSTERNATION AND ALARM DISTURBS THE PEACE AND QUIET OF THE COMMUNITY." CANTWELL v. CONNECTICUT, 310 US 296, 308, 60 S Ct 900, 912 (1940).

IN *COX* V. *LOUISIANA*, SUPRA, THE SUPREME COURT RECOGNIZED THAT the street was completely blocked by the demonstrators, but nonetheless overturned the convictions. The Louisians statute is remarkably similar to § 170:29 (2)(b) involved in this case:

> "*Obstructing Public Passages*.
> No person shall wilfully obstruct the free, convenient and normal use of any public sidewalk, street, highway, bridge, alley, road or other passageway, or the entrance corridor or passage of any public building.../etc./ by impeding, hindering, stifling, retarding or restraining traffic or passage thereon or therein."

As in this case, the defendants in the *Cox* case intended ~~to petit~~ to petition for a redress of grievances. It was not the purpose of either the defendants in *Cox*, or here (D.____A.) to obstruct traffic. As regards the purpose

of the demonstrators in the Cox case, the Court said:

> "In upholding appellant's conviction under this statute, the Louisians Supreme Court thus construed the statute so as to apply to public assemblies which do not have as their specific purpose the obstruction of traffic. There is no doubt from the record in this case that this far sidewalk was obstructed, and thus, as so construed, appellant violated the statute."

The unbridled discretion of police officers and their application of such broad statutes to conduct such as that of the defendants in the present case was analyzed by the court:

> "The pervasive restriant on freedom of discussion by the practice of the authorities under the statute is not any less effective than a statute expressly permitting such selective enforcement." Cox v. Louisiana, supra, at _________.

WHEN CHARGED WITH DISORDERLY CONDUCT:

> "... THE DEFENDANT MAY ... RAISE ANY DEFENSE WHICH NEGATES THE EXISTENCE OF ANY OF THE ELEMENTS OF THE OFFENSE OF BREACH OF THE PEACE. WHARTON'S CRIMINAL LAW, SUPRA, AT 663.

THUS ONLY AN ACT WHICH "OBSTRUCTS OR INTERFERES" TO THE EXTENT OF CREATING A BREACH OF THE PEACE MAY BE PUNISHED UNDER NJSA (1952) CHAP. 2A:170(2)(b).

(3) THE STATUTE IS UNCONSTITUTIONAL ON ITS FACE AND AS APPLIED.

(a) ON ITS FACE

A FAILURE TO ~~IMPOSE~~ ~~THIS~~ LIMIT THE STATUTE ~~ON THE MEANING~~ TO BREACHES OF THE PEACE ~~THIS~~ ~~IN SUCH A~~ ~~WAY~~ WOULD RENDER ~~ENABLES~~ IT UNCONSTITUTIONAL ON ITS FACE. EDWARDS v. SOUTH CAROLINA, SUPRA; FIELDS v. SOUTH CAROLINA, SUPRA; HENRY v. ROCK HILL, SUPRA; COX v. LOUISIANA, SUPRA; CANTWELL v. CONNECTICUT, SUPRA.

THUS THE LOUISIANA STATUTE WAS HELD TO BE UNCONSTITUTIONAL ON ITS FACE.

~~SINCE THERE WAS NOT EVEN THE REMOTEST~~

~~FAA~~ IN STATE V. FURINO, 85 N.J. SUPER 345 (1964), THE DEFENDANT WAS CONVICTED FOR OBSTRUCTING A POLICE OFFICER BY THE USE OF PHYSICAL FORCE. IN THAT CASE A BREACH OF THE PEACE WAS APPARENT.

~~NO DETERMINATION OF THE NEED FOR A IN THE PRESENT THIS CASE NO BREACH OF THE PEACE OR DISORDERLY CONDUCT WAS AT ALL SUGGESTED, AND THEREFOR THE DEFENDANTS' ARE A ONLY [illegible] CONSTITUTIONALLY PROTECTED.~~

THE FOLLOWING DOCUMENTS ARE THE
BEST AVAILABLE.

Newark Star-Ledger
NEWARK, N. J.
D. 235,509 SUN. 383,274

Trenton cases

1965

[redacted]

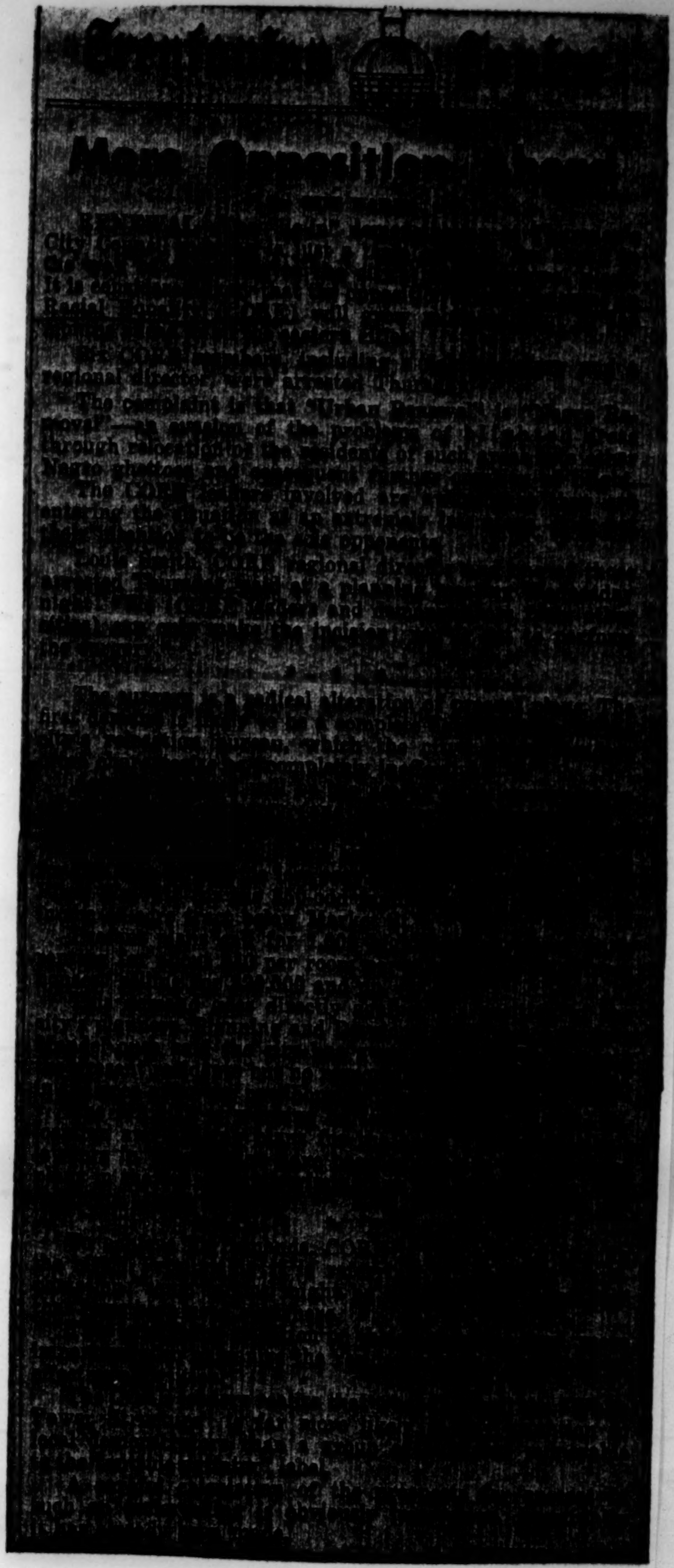
Philadelphia Inquirer
PHILADELPHIA, PA.
D. 603,138 SUN. 983,643

(N. J. SECTION)

NOV 7 1964

The Trentonian
TRENTON, N. J.
D. 45,559

NOV 9 1964



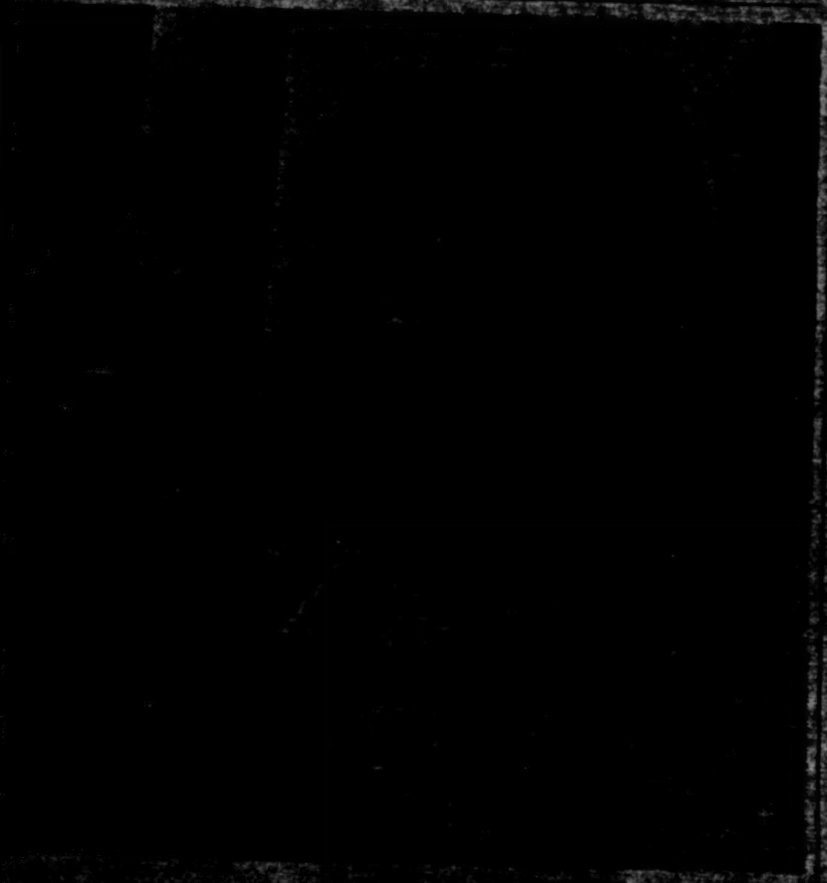
More Opposition Shown

The Trentonian
TRENTON, N. J.
D. 45,559

NOV 6 1964

Police Break Up Sit-In at Relocation Confab

[illegible]



[illegible]

The Trentonian
TRENTON, N. J.
D. 45,559

PAGE ONE

NOV 6 1964

[illegible]

The Philadelphia Inquirer
PHILADELPHIA, PA.
D. 603,438 SUN. 983,643
(N. J. SECTION)

NOV 6 1964

8 in Sit-In Arrested

[illegible]

Trenton Evening Times
TRENTON, N. J.
D. 73,053
PAGE ONE
CERTIFIED
NOV 6 1964

Hearing Deferred In City Hall Lie-In

The militant National Congress of Racial Equality (CORE) apparently has decided to become directly embroiled in Trenton's urban renewal relocation and housing disputes.

A Municipal Court hearing for six "lie-in" demonstrators arrested last night at City Hall was continued this morning until November [illegible] on a request from the national CORE office.

Herbert Callender, professional field secretary for CORE and one of the men arrested, told Magistrate Albert Cooper Jr. that national CORE Director James J. Farmer had told him to seek the continuance.

The four young Negro men, a Ewing Township Negro woman and a white girl from Philadelphia are all members of the Congress of Racial Equality (CORE). They were arrested during a City Council meeting [illegible]

Callender, 31, of New York [illegible]

Callender and four others spent the night in jail after refusing to post [illegible] bond each. The others are Jesse L. [illegible]rik, 21, and Louis Smith, [illegible] both of New York City; [illegible] Amis, 21, of Philadelphia, and Willard Crittendon, [illegible] no address.

The fifth, Mrs. Arthur Lewis of [illegible] Arden Avenue, Ewing Township, was released on [illegible] bail. Bail was [illegible] for Callender and [illegible] of [illegible] for the others. All were charged with disorderly conduct.

They were at the Council meeting [illegible] urban renewal [illegible]

Hearing

Continued from Page One

[illegible]

The incident began when [illegible] City Council [illegible]

SEDFRE

NEW JERSEY BREWERS AGREEMENT - CASE, CORRESPONDENCE
1964 - 1965

orical Society of Wisconsin

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[March 1959]

Please Return !!

DS-751
Newark, New Jersey

✓

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

NEW JERSEY BREWERS ASSOCIATION
ANHEUSER-BUSCH, INC.
P. BALLANTINE & SONS
JOSEPH HENSLER BREWING COMPANY
G. KRUEGER BREWING COMPANY
PABST BREWING COMPANY
LIEBMANN BREWERIES INC.

and

Case No. 22-CA-15

MARTIN McDONALD, An Individual

and

LOCAL 843, LOCAL 4, LOCAL 153 AND
BREWERY WORKERS JOINT LOCAL EXECUTIVE
BOARD OF NEW JERSEY, ALL AFFILIATED
WITH INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA

Parties to the Contract

LOCAL 843, INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA

and

MARTIN McDONALD, An Individual

and

Case No. [illegible]

NEW JERSEY BREWERS ASSOCIATION
ANHEUSER-BUSCH INC.
P. BALLANTINE & SONS
JOSEPH HENSLER BREWING COMPANY
G. KRUEGER BREWING COMPANY
PABST BREWING COMPANY
LIEBMANN BREWERIES INC.

LOCAL 4, LOCAL 153, AND BREWERY
WORKERS JOINT LOCAL EXECUTIVE BOARD
OF NEW JERSEY, ALL AFFILIATED
WITH INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA

Parties to the Contract

Property of West Essex
Chapter of CORE
David L. Anderson, Action
Chairman
40 South Burnet St.
East Orange, N.J.

ORG-1000,
CM 381

See particularly
Appendix A + B

NEW JERSEY BREWERS ASSOCIATION
ANHEUSER-BUSCH INC.
P. BALLANTINE & SONS
JOSEPH HENSLER BREWING COMPANY
G. KRUEGER BREWING COMPANY
PABST BREWING COMPANY
LIEBMANN BREWERIES INC.

and — Case No. 22-CA-89

MARTIN McDONALD, on behalf of himself
and JOHN JONES, JOHN MUCCIOLO, C.
BALBO, JOHN HURLEY, JULES WARGA

LOCAL 843, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA

LOCAL 4, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA

LOCAL 153, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN — Case No. 22-CB-43
AND HELPERS OF AMERICA

BREWERY WORKERS JOINT LOCAL EXECUTIVE
BOARD OF NEW JERSEY, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA

and

MARTIN McDONALD, on behalf of himself
and JOHN JONES, JOHN MUCCIOLO, C.
BALBO, JOHN HURLEY AND JULES WARGA

DECISION AND ORDER

Statement of the Cases

On October 23, 1958, New Jersey Brewers Association, Anheuser-Busch, Inc., P. Ballantine & Sons, Joseph Hensler Brewing Company, G. Krueger Brewing Company, Liebmann Breweries, Inc., Pabst Brewing Company, herein called the Respondent Employers; Local 843, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called Respondent Local 843, by its representatives and agents, including Brewery Workers Joint Local Executive Board of New Jersey; Local 843, Local 4 and Local 153 and Brewery Workers Joint Local Executive Board of New Jersey, all affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Respondent Unions; and Edward F. Ryan, Counsel for the General Counsel on behalf of the National Labor Relations Board, herein called the Board, entered into a Settlement Stipulation, subject to approval of the Board, providing for the entry of a consent order by the Board, and a consent decree by any appropriate United States Court of Appeals. The parties waived all further and other procedure before the Board to which they may be entitled under the Act, and the Rules and Regulations of the Board, and Respondents waived their right to contest the entry of a consent decree or to receive further notice of the application therefor.

The aforesaid Settlement Stipulation is hereby approved and made a part of the record herein, and the proceeding is hereby transferred to and continued before the Board for the entry of a Decision and Order pursuant to the provisions of the said Settlement Stipulation.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this proceeding to a three-member panel.

Upon the basis of the aforesaid Settlement Stipulation and the entire record in the cases, the Board makes the following:

Findings of Fact

1. The business of Respondent Employers

(a) P. Ballantine & Sons, a New Jersey corporation, whose principal place of business is located in Newark, New Jersey, is engaged in the manufacture, distribution and sale of beer, ale and other malt beverages at its plant located in Newark, New Jersey. During the past year P. Ballantine & Sons has caused to be manufactured, distributed and sold from its Newark plant, products valued at in excess of $10,000,000, and of this an amount in excess of $1,000,000 involves shipments in interstate commerce directly to States of the United States other than the State of New Jersey.

(b) Anheuser-Busch Inc., a Missouri corporation, is engaged in the manufacture, distribution and sale of beer, ale and other malt beverages at its plant located in Newark, New Jersey. During the past year Anheuser-Busch Inc., caused to be manufactured, distributed and sold from its Newark plant, in interstate commerce, directly to States of the United States other than the State of New Jersey, products valued at in excess of $50,000.

(c) Joseph Hensler Brewing Company, a New Jersey corporation, was engaged in the manufacture, distribution and sale of beer, ale and other malt beverages at its plant located in Newark, New Jersey. During the past year Joseph Hensler Brewing Company has made purchases from points outside of the State of New Jersey of products valued in excess of $500,000 which products were shipped directly to its plant located in Newark, New Jersey.

(d) G. Krueger Brewing Company, a Delaware corporation, is engaged in the manufacture, distribution and sale of beer, ale and other malt beverages at its plant located in Newark, New Jersey. During the past year G. Krueger Brewing Company caused to be manufactured, distributed and sold from its Newark plant, in interstate commerce, directly to States of the United States other than the State of New Jersey, products valued at in excess of $50,000.

(e) Pabst Brewing Company, a Delaware corporation, is engaged in the manufacture, distribution and sale of beer, ale and other malt beverages at its plant located in Newark, New Jersey. During the past year Pabst Brewing Company caused to be manufactured, distributed and sold from its Newark plant, in interstate commerce, directly to States of the United States other than the State of New Jersey, products valued at in excess of $50,000.

(f) Liebmann Breweries, Inc., a New Jersey corporation, is engaged in the manufacture, distribution and sale of beer, ale and other malt beverages at its plant located in Orange, New Jersey. During the past year Liebmann Breweries, Inc., caused to be manufactured, distributed and sold from its Orange plant, in interstate commerce, directly to States of the United States other than the State of New Jersey, products valued at in excess of $50,000.

(g) The Employers named and described above are or were at all times material herein members of the New Jersey Brewers Association.

(h) At all times material herein, New Jersey Brewers Association represents all of its members for purposes of collective bargaining and is an Employer within the meaning of Section 2 (2) of the Act.

Respondent Employers admit, and we find that they are engaged in commerce within the meaning of the Act.

2. The labor organizations involved

Local 843, Local 4, Local 153 and the Brewery Workers Joint Local Executive Board of New Jersey, all affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousmen and Helpers of America, are labor organizations within the meaning of Section 2(5) of the Act.

ORDER

Upon the basis of the above findings of fact, the Settlement Stipulation and the entire record in the cases, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that:

I. The Respondent, New Jersey Brewers Association, Anheuser-Busch Inc., P. Ballantine & Sons, Joseph Hensler Brewing Company, G. Krueger Brewing Company, Liebmann Breweries Inc., Pabst Brewing Company, and their officers, agents, successors and assigns at its plants located in Newark and Orange, New Jersey, as the case may be, shall:

(a) Cease and desist from:

(1) performing, maintaining or otherwise giving effect to any agreement, understanding, arrangement or practice whereby the final determination as to the contract right of regular employees, upon loss of employment at any of Respondent Employers plants, to displace seasonal or temporary employees at any other of Respondent Employers plants, is delegated to Local 843, its agents, including Brewery Workers Joint Local Executive Board of New Jersey, and/or conditioned upon the clearance or approval of Local 843, its agents, including Brewery Workers Joint Local Executive Board of New Jersey, except in accordance with Section 8 (a)(3) of the Act.

(2) Performing, maintaining or otherwise giving effect to any agreement, understanding, arrangement or practice whereby seasonal or temporary employees or applicants for employment as seasonal or temporary employees must obtain clearance or work permits from Local 843 and/or its agents, including Brewery Workers Joint Local Executive Board of New Jersey, as a condition of employment, except in accordance with Section 8 (a)(3) of the Act.

(3) Performing, maintaining or otherwise giving effect to any agreement, understanding, arrangement or practice whereby the hiring and/or daily selection of seasonal or temporary employees for employment is delegated exclusively to Local 843, its agents, including Brewery Workers Joint Local Executive Board of New Jersey, except in accordance with Section 8 (a)(3) of the Act and whereby such hiring and/or daily selection of seasonal or temporary employees is conditioned on the payment of initiation fees, dues or any other monies to Respondent Local 843 and/or its agents, including Brewery Workers Joint Local Executive Board of New Jersey.

(4) Encouraging membership in Respondent Local 843, its agents, including Brewery Workers Joint Local Executive Board of New Jersey, or in any labor organization by requiring employees to pay periodic dues or initiation fees to Respondent Local 843 and/or its agents, including Brewery Workers Joint Local Executive Board of New Jersey, or any other labor organization as a condition of employment after the expiration of five (5) days employment; or by requiring employees to pay periodic dues or initiation, fees to Respondent Local 843 and/or its agents, including Brewery Workers Joint Local Executive Board of New Jersey, or any other labor organization as a condition of employment if the Respondent Employers have reasonable grounds to believe that membership in such labor organization is not available to these employees on the same terms and conditions generally applicable to other members; or in any other manner requiring employees to pay periodic dues initiation fees or any other monies as a condition of employment except as authorized by the proviso to Section 8 (a)(3) of the Act.

(5) Executing, performing, maintaining or otherwise giving effect to union security provisions in its collective bargaining agreement with Respondent Unions, dated April 1, 1956, or any extension or supplement or renewal thereof, unless and until Respondent Unions receive notice from the National Labor Relations Board or its agents, that they are in compliance with the provisions of Section 9 (f)(g) and (h) of the Act.

(6) In any like or related manner encouraging membership in any labor organization by discrimination in regard to hire, tenure of employment or any term or condition of employment, except as permitted by Section 8 (a) (3) of the Act.

(7) In any like or related manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8 (a)(3) of the Act.

(b) Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(1) Post at its respective plants located in Newark and Orange, New Jersey, copies of the notice attached hereto and marked, "Appendix A." 1/ Copies of said notice to be furnished by the Regional Director for the Twenty-second Region after being signed by the Respondent employers representatives', shall be posted by the Respondent Employers immediately upon receipt thereof and maintained by them for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent Employers to insure that such notices are not altered, defaced or covered by any other material; and

(2) Notify the Regional Director for the Twenty-second Region, in writing, within ten (10) days from the date of this Order, as to what steps Respondents have taken to comply herewith.

1/ In the event that this order is enforced by a Decree of the United States Court of Appeals, there shall be substituted for the words "PURSUANT TO A DECISION AND ORDER," the words "PURSUANT TO A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER."

II. The Respondent Union Local 843, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and its officers, representatives, agents including Brewery Workers Joint Local Executive Board of New Jersey, and assigns shall:

(a) Cease and desist from:

(1) Performing, maintaining or otherwise giving effect to any agrement, understanding, arrangement or practice whereby the final determination as to the contract right of regular employees, upon loss of employment at any of Respondent Employers plants, to displace seasonal or temporary employees at any other of Respondent Employers plants is delegated to Respondent Local 843, its agents, including Brewery Workers Joint Local Executive Board of New Jersey, and/or conditioned upon the clearance or approval by Respondent Local 843, and/or its agents, including Brewery Workers Local Executive Board of New Jersey, except in accordance with Section 8 (a)(3) of the Act.

(2) Performing, maintaining or otherwise giving effect to any agremment, understanding, arrangement or practice whereby seasonal or temporary employees or applicants for employment as seasonal or temporary employees must obtain clearance or work permits from Local 843, and/or its agents, including Brewery Workers Joint Local Executive Board of New Jersey, as a condition of employment, except in accordance with Section 8 (a)(3) of the Act.

(3) Performing, maintaining or otherwise giving effect to any agreement, understanding, arrangement or practice whereby the hiring and/or daily selection of seasonal or temporary employees for employment is delegated exclusively to Respondent Local 843 its agents, including Brewery Workers Joint Local Executive Board of New Jersey, except in accordance with Section 8 (a)(3) of the Act and whereby such hiring and/or daily selection of seasonal or temporary employees for employment is conditioned on the payment of initiation fees, dues or any other monies to Respondent Local 843, and/or its agents, including Brewery Workers Joint Local Executive Board of New Jersey.

(4) Causing or attempting to cause the Respondent Employers to discriminate against their employees by requiring employees to pay periodic dues or initiation fees to Respondent Local 843 and/or its agents, including Brewery Workers Joint Local Executive Board of New Jersey, as a condition of employment after the expiration of five (5) days employment; or by requiring Respondent Employers' employees to pay periodic dues or initiation fees to Respondent Local 843 and/or its agents, including Brewery Workers Joint Local Executive Board of New Jersey, as a condition of employment unless membership in such labor organization is available to these employees on the same terms and conditions generally applicable to other members; or in any other manner requiring employees to pay periodic dues, initiation fees or any other monies as a condition of employment except as authorized by the proviso to Section 8 (a)(3) of the Act.

(5) In any like or related manner causing or attempting to cause Respondent Employers or any other employer to discriminate against their employees in regard to hire, tenure of employment or any terms or condition of employment, except as permitted by Section 8 (a)(3) of the Act.

(6) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8 (a)(3) of the Act.

(b) Take the following affirmative action which the Board finds will effectuate the policies of the Act.

(1) Post at its office in Newark, New Jersey, copies of the notice attached hereto marked, "Appendix B." 2/ Copies of said notice to be furnished by the Regional Director for the Twenty-second Region, after being duly signed by a representative of Respondent Local 843 its agents, including Brewery Workers Joint Local Executive Board of New Jersey, shall be posted by it immediately upon receipt thereof and maintained by it for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent Local 843 its agents, including Brewery Workers Joint Local Executive Board of New Jersey, to insure that said notices are not altered, defaced or covered by any other material and;

(2) Mail to the Regional Director for the Twenty-second Region signed copies of the notice attached hereto and marked Appendix B, for posting by the Respondent Employers, if they be willing. Copies of said notice to be furnished by the Regional Director for the Twenty-second Region, shall after being duly signed by representatives of Respondent Local 843, its agents, including Brewery Workers Joint Local Executive Board of New Jersey, be forthwith returned to said Regional Director for such posting, and;

(3) Notify the Regional Director for the Twenty-second Region, in writing, within ten (10) days from the date of this Order, as to what steps Respondent Local 843, its agents, including Brewery Workers Joint Local Executive Board of New Jersey, has taken to comply herewith.

III. Respondent Unions, Local 843, Local 4, Local 153 and Brewery Workers Joint Local Executive Board of New Jersey, all affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, shall:

(a) Cease and desist from:

(1) Executing, performing, maintaining or otherwise giving effect to union security provisions in their collective bargaining agreement, dated April 1, 1956, or any extension or supplement or renewal thereof, unless and until Respondent Unions receive notice from the National Labor Relations Board or its agents, that it is in compliance with the provisions of Section 9 (f), (g) and (h) of the Act.

(2) In any like or related manner causing or attempting to cause Respondent Employers to discriminate against their employees in regard to hire, tenure of employment or any term or condition of employment except as permitted by Section 8 (a)(3) of the Act.

2/ In the event that this order is enforced by a Decree of the United States Court of Appeals, there shall be substituted for the words "PURSUANT TO A DECISION AND ORDER," the words "PURSUANT TO A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING AND ORDER."

(b) Take the following affirmative action which the Board finds will effectuate the policies of the Act.

(1) Post at its offices in Newark, New Jersey, copies of the notice attached hereto marked, "Appendix C." 3/ Copies of said notice to be furnished by the Regional Director for the Twenty-second Region, after being duly signed by representatives of Respondent Unions, shall be posted by it immediately upon receipt thereof and maintained by it for a period of sixty (60) consecutive days thereafter in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent Unions to insure that said notices are not altered, defaced or covered by any other material; and

(2) Mail to the Regional Director for the Twenty-second Region signed copies of the notice attached hereto and marked Appendix C, for posting by the Respondent Employers, if they be willing. Copies of said notice to be furnished by the Regional Director for the Twenty-second Region, shall after being duly signed by representatives of Respondent Unions, be forthwith returned to said Regional Director for such posting; and

(3) Notify the Regional Director for the Twenty-second Region, in writing, within ten (10) days from the date of this Order, as to what steps Respondent Unions have taken to comply herewith.

Dated, Washington, D. C.,

MAR 24 1959

Boyd Leedom

Boyd Leedom, Chairman

Philip Ray Rodgers, Member

Joseph Alton Jenkins, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

3/ In the event that this order is enforced by a Decree of the United States Court of Appeals, there shall be substituted for the words "PURSUANT TO A DECISION AND ORDER," the words "PURSUANT TO A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER."

APPENDIX "A"

NOTICE
TO ALL EMPLOYEES

PURSUANT TO
A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify you that:

WE WILL NOT perform, maintain, or otherwise give effect to any agreement, understanding, arrangement or practice whereby the final determination as to the contract right of regular employees, upon loss of employment at any of the undersigned employers' plants, to displace seasonal or temporary employees at any other of the undersigned employers' plants, is delegated to LOCAL 843, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, ITS AGENTS, INCLUDING BREWERY WORKERS JOINT LOCAL EXECUTIVE BOARD OF NEW JERSEY, and/or conditioned upon the clearance or approval of LOCAL 843, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, ITS AGENTS, INCLUDING BREWERY WORKERS JOINT LOCAL EXECUTIVE BOARD OF NEW JERSEY, except in accordance with Section 8 (a)(3) of the Act.

WE WILL NOT perform, maintain, or otherwise give effect to any agreement, understanding, arrangement or practice whereby seasonal or temporary employees or applicants for employment as seasonal or temporary employees must obtain clearance or work permits from LOCAL 843, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, ITS AGENTS, INCLUDING BREWERY WORKERS JOINT LOCAL EXECUTIVE BOARD OF NEW JERSEY, as a condition of employment, except in accordance with Section 8 (a)(3) of the Act.

WE WILL NOT perform, maintain or otherwise give effect to any agreement, understanding, arrangement or practice whereby the hiring and/or daily selection of seasonal or temporary employees for employment is delegated exclusively to LOCAL 843, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, ITS AGENTS, INCLUDING BREWERY WORKERS JOINT LOCAL EXECUTIVE BOARD OF NEW JERSEY, except in accordance with Section 8 (a)(3) of the Act, and whereby such selection of seasonal or temporary employees is conditioned on the payment of initiation fees, dues or any other monies to LOCAL 843, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, ITS AGENTS, INCLUDING BREWERY WORKERS JOINT LOCAL EXECUTIVE BOARD OF NEW JERSEY.

WE WILL NOT encourage membership in LOCAL 843, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, ITS AGENTS, INCLUDING BREWERY WORKERS JOINT LOCAL EXECUTIVE BOARD OF NEW JERSEY, or in any labor organization by requiring employees to pay periodic dues or initiation fees to LOCAL 843, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, ITS AGENTS, INCLUDING BREWERY WORKERS JOINT LOCAL EXECUTIVE BOARD OF NEW JERSEY, or any other labor organization as a condition of employment after the expiration of five (5) days employment; or by requiring employees to pay periodic dues or initiation fees to LOCAL 843, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, ITS AGENTS, INCLUDING BREWERY WORKERS JOINT LOCAL EXECUTIVE BOARD OF NEW JERSEY, or any other labor organization as a condition of employment if we have reasonable grounds to believe that membership in such labor organization is not available to these employees on the same terms and conditions generally applicable to other members; or in any other manner requiring employees to pay periodic dues, initiation fees or any other monies as a condition of employment, except as authorized by the proviso to Section 8 (a)(3) of the Act.

WE WILL NOT execute, perform, maintain or otherwise give effect to the union security provisions in our collective bargaining agreement with LOCAL 843, LOCAL 4, LOCAL 153 AND BREWERY WORKERS JOINT LOCAL EXECUTIVE BOARD OF NEW JERSEY, all affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, dated April 1, 1956, or any extension or supplement or renewal thereof, unless and until the aforesaid labor organizations receive notice from the National Labor Relations Board or its agents, that they are in compliance with the provisions of Section 9 (f)(g) and (h) of the Act.

WE WILL NOT in any like or related manner encourage membership in any labor organization by discrimination in regard to hire, tenure of employment or any term or condition of employment, except as permitted by Section 8 (a)(3) of the Act.

WE WILL NOT in any like or related manner interfere with, restrain or coerce employees in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8 (a)(3) of the Act.

NEW JERSEY BREWERS ASSOCIATION
(Employer)

Dated ____________________ By ____________________
(Representative) (Title)

ANHEUSER-BUSCH INC.
(Employer)

Dated ____________________ By ____________________
(Representative) (Title)

P. BALLANTINE & SONS
(Employer)

Dated ____________________ By ____________________
(Representative) (Title)

LIEBMANN BREWERIES INC.
(Employer)

Dated ____________________ By ____________________
(Representative) (Title)

PABST BREWING COMPANY
(Employer)

Dated____________________ By____________________
(Representative) (Title)

G. KRUEGER BREWING COMPANY
(Employer)

Dated____________________ By____________________
(Representative) (Title)

JOSEPH HENSLER BREWING COMPANY
(Employer)

Dated____________________ By____________________
(Representative) (Title)

This notice must remain posted for 60 days from the date of posting, and must not be altered, defaced, or covered by any other material.

APPENDIX "B"

NOTICE
TO ALL MEMBERS
OF LOCAL 843, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

and

TO ALL EMPLOYEES
OF EMPLOYERS WHO ARE MEMBERS OF NEW JERSEY BREWERS ASSOCIATION

PURSUANT TO
A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify you that:

> WE WILL NOT perform, maintain or otherwise give effect to any agreement, understanding, arrangement or practice whereby the final determination as to the contract right of regular employees upon loss of employment at any of the Employer's plants to displace seasonal or temporary employees at any other of the Employer's plants is delegated to LOCAL 843, its agents, including Brewery Workers Joint Local Executive Board of New Jersey, and/or conditioned upon the clearance or approval by LOCAL 843, and/or its agents, including Brewery Workers Joint Local Executive Board of New Jersey, except in accordance with Section 8 (a) (3) of the Act.
>
> WE WILL NOT perform, maintain, or otherwise give effect to any agreement, understanding, arrangement or practice whereby seasonal or temporary employees or applicants for employment as seasonal or temporary employees must obtain clearance or work permits from LOCAL 843 and/or its agents, including Brewery Workers Joint Local Executive Board of New Jersey, as a condition of employment, except in accordance with Section 8 (a)(3) of the Act.
>
> WE WILL NOT perform, maintain, or otherwise give effect to any agreement, understanding, arrangement or practice whereby the hiring and/or daily selection of seasonal or temporary employees for employment is delegated exclusively to LOCAL 843, its agents, including Brewery Workers Joint Local Executive Board of New Jersey, and whereby such hiring and/or daily selection of seasonal or temporary employees for employment is conditioned on the payment of initiation fees, dues or any other monies to LOCAL 843, and/or its agents, including Brewery Workers Joint Local Executive Board of New Jersey.
>
> WE WILL NOT cause or attempt to cause NEW JERSEY BREWERS ASSOCIATION or any of its members, to discriminate against their employees by requiring their employees to pay periodic dues or initiation fees to LOCAL 843 and/or its agents, including Brewery Workers Joint Local Executive Board of New Jersey, as a condition of employment after the expiration of five (5) days employment; or by requiring employees of NEW JERSEY BREWERS ASSOCIATION or any of its members to pay periodic dues or initiation fees to LOCAL 843 and/or its agents, including Brewery Workers Joint Local Executive Board of New Jersey, as a condition of employment unless membership

in such labor organization is available to these employees on the same terms and conditions generally applicable to other members; or in any other manner requiring employees to pay periodic dues, initiation fees or any other monies as a condition of employment except as authorized by the proviso to Section 8 (a) (3) of the Act.

WE WILL NOT in any like or related manner cause or attempt to cause NEW JERSEY BREWERS ASSOCIATION or any of its members, to discriminate against its employees in regard to hire, tenure of employment or any term or condition of employment, except as permitted by Section 8 (a)(3) of the Act.

WE WILL NOT in any like or related manner, restrain or coerce employees in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8 (a)(3) of the Act.

LOCAL 843, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA
(Labor Organization)

Dated ______________ By ______________
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

NOTICE

TO ALL MEMBERS
OF LOCAL 843, LOCAL 4, LOCAL 153 AND BREWERY WORKERS JOINT LOCAL EXECUTIVE BOARD OF NEW JERSEY, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

and

TO ALL EMPLOYEES

OF EMPLOYERS WHO ARE MEMBERS OF NEW JERSEY BREWERS ASSOCIATION

PURSUANT TO
A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify you that:

> WE WILL NOT execute, perform, maintain or otherwise give effect to the union security provisions in our collective bargaining agreement with NEW JERSEY BREWERS ASSOCIATION and its members, dated April 1, 1956, or any extension or supplement or renewal thereof, unless and until we receive notice from the National Labor Relations Board or its agents, that we are in compliance with the provisions of Section 9 (f) (g) and (h) of the Act.
>
> WE WILL NOT in any like or related manner cause or attempt to cause NEW JERSEY BREWERS ASSOCIATION or its members to discriminate against its employees in regard to hire, tenure of employment or any term or condition of employment except as permitted by Section 8 (a)(3) of the Act.

LOCAL 843, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA
(Labor Organization)

Dated ____________ By ____________________
(Representative) (Title)

LOCAL 153, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA
(Labor Organization)

Dated ____________ By ____________________
(Representative) (Title)

LOCAL 4, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA
(Labor Organization)

Dated ____________ By ____________________
(Representative) (Title)

BREWERY WORKERS JOINT LOCAL EXECUTIVE BOARD OF NEW JERSEY, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA
(Labor Organization)

Dated ____________ By ____________________
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced or covered by any other material.

CORE WEST ESSEX CHAPTER

Main Post Office
Box 414
East Orange, N.J.
Phone OR 6-7100

CONFIDENTIAL QUESTIONAIRE

Name SAMUEL J. JONES Phone 622-7079

Address 43 JONES ST., NEWARK 3, N.J.

Occupation WAREHOUSEMAN Dept

Place of Employment P. BALLANTINE & SONS

No. of years employed 1½ yrs. Total No. of Yrs. Experience 10

Position held DRIVER-WAREHOUSEMAN How long 10 yrs

EDUCATION: (please check one)

☐ Grade School ☐ High School ☒ College ☐ Other

(If you checked College or Other please explain fully below.)

AGRI. & TECH. COLL. OF N.C. 1 yr. MECH. ENG.
JERSEY CITY STATE COLL. 2 yr. MATH.-ENG. (EDUC.)

Marital Status DIVORCED Male X Female ___

Organizations (member of)
NAACP

COMPLAINT: BALLANTINE HAS FORCED ME TO TAKE A SENIORITY BREAK EVERY SIX MONTHS SINCE I WAS HIRED; KEEPING ME FROM SENIORITY AND THEREBY HIGHER AND EQUAL PAY TO REGULAR EMPLOYEES. I WANT MY DUE SENIORITY AND BACK PAY.

Objective: (please check one)

☐ Promotion ☐ Transfer ☐ Training ☒ Other (explain)
TO OBTAIN REGULAR WORKING STATUS.

Date 3-2-64 Signature Samuel J. Jones

CORE WEST ESSEX CHAPTER

Main Post Office
Box 414
East Orange, N.J.
Phone OR 6-7100

CONFIDENTIAL QUESTIONAIRE

Name Gordon Roberts Jr Phone OR 7-1759 OR 3-6154

Address 100 Elmwood Avenue East Orange, N J

Occupation Beer Industry Dept Warehouse

Place of Employment P. Ballantine & Sons

No. of years employed 11 yrs Total No. of Yrs. Experience 11 yrs

Position held Warehouseman How long 11 yrs.

EDUCATION: (please check one)

☐ Grade School ☐ High School ☑ College ☐ Other

(If you checked College or Other please explain fully below.)

Seton Hall U 2½ yrs Psychology

Marital Status Married Male ✓ Female —

Organizations (member of)

Orange Triangles Athletic Club
[illegible] Athletic Club

COMPLAINT: Ballantine and the Union have discriminated against me in their manner of calling men for work, seniority breaks which denied me regular status, [illegible] in contractual agreements. [illegible] seniority [illegible] men with less time are ahead of me

Objective: (please check one)

☑ Promotion ☐ Transfer ☐ Training ☐ Other (explain)

Secure starting date seniority and back pay

Date 2/16/64 Signature Gordon Roberts Jr

Exhibit III

NATIONAL LABOR RELATIONS BOARD
WASHINGTON, D.C.

MONDAY PM PAPERS
AUGUST 20, 1962

(R-883)
DUDLEY 2-4094

N.L.R.B. GENERAL COUNSEL AUTHORIZES UNFAIR LABOR PRACTICE COMPLAINT AGAINST UNION FOR REFUSING TO PROCESS NEGRO EMPLOYER'S GRIEVANCE BECAUSE OF RACE

Stuart Rothman, General Counsel of the National Labor Relations Board, today authorized the issuance of an unfair labor practice complaint charging that a local union violated the National Labor Relations Act by refusing to represent a Negro employee in a grievance proceeding because of his race.

This is the first case of its kind in the 27-year history of the Labor Board, Mr. Rothman said.

The union charged with the violation is Local 1, Independent Metal Workers Union, unaffiliated, at Houston, Texas.

The complaint will be based on a charge filed by a sister union, Local 2, Independent Metal Workers Union, which is the joint bargaining agent with Local 1 at the Hughes Tool Company plant at Houston. Local 1 is composed of white employees and Local 2 is composed of Negroes.

The complaint will allege that Local 1 violated Section 8(3)(1)(A) of the National Labor Relations Act, which forbids a union to "restrain or coerce" employees in the exercise of their rights under the Act. The complaint will be issued by the N.L.R.B. Regional Office at Houston as soon as appropriate legal papers can be prepared.

The employee who filed the grievance involved is Ivory M. Davis, a material handler who has been employed by Hughes since 1942. He has been treasurer of Local 2 since 1953.

His grievance was that the company had refused to consider his application for the company apprentice program to train for the job of machinist and tool maker. According to the charge, he requested

Local 1 to represent him in processing a grievance on the matter and Local 1 refused.

The two locals have represented Hughes' employees for more than 10 years, but thery were recertified by the Labor Board as joint representatives in October 1961. The contracts between the employer and the unions for many years have divided the jobs between two classifications designated by Roman numerals I and II. The investigation disclosed that, by tacit understanding, only white employees have held jobs designated by I, and Negroes have been employed only in Class II jobs, which include only the lower-paid classifications.

Mr. Rothman said that the N.L.R.B. field investigation disclosed that, despite its obligations as the jointly certified representative of all the unit employees, Local 1 refused to process Davis' grievance over being denied apprenticeship opportunities which were conferred to white employees.

In authorizing the issuance of the somplaint Mr. Rothman pointed out that the case raises the broad question of whether the rights guaranteed to employees by the National Labor Relations Act includes the right to fair representation. Mr. Rothman noted that the Board has held that a union violates Section 8(b)(1)(A) by the "imposition of discriminatory conditions" upon its representation of employees. (M. Eskin & Son, 135 NLRB No. 61; Peerless Tool, 111 NLRB 853, enforced 231 F. 2d 298, C.A. 7). Further, the Supreme Court, in several cases under the Railway Labor Act, has held that unions possessing exclusive bargaining representation rights under the Act must represent all employees in the bargaining unit "fairly" and "impartially" without discrimination based upon such "obviously irrelevant and invidious" considerations as the employee's race. (Steele v. Louisville & Nashville R.Co., 323 U.S. 192, 1944).

Exhibit IV

We, the undersigned, affirm that we did not ever see posted anywhere in the plant of P. Ballantine and Sons Brewery, in Newark, New Jersey, or in the plant of Liebman Breweries, in Orange, New Jersey, or in the headquarters of any Teamsters Union local to which we belonged, any decision and order issued by the National Labor Relations Board on March 24, 1959. We now know that the order was one in which the New Jersey Brewers Association was ordered to cease and desist from any arrangement whereby the Union determined the right of regular employees at any of the plants in the New Jersey Brewers' Association to replace seasonal or temporary workers at any of the other plants. And we now know that the association was ordered to cease and desist from any arrangement whereby the Union was delegated exclusively the right to select seasonal or temporary employees and the selection was based upon payment of union initiation fees or dues. And we now know that the order stated that the Union must cease and desist from causing the employers ~~to discriminate against employees~~ to discriminate against employees in regard to hire, tenure of employment of any terms or conditions of employments except as permitted by law. We assert that the issues dealt with in the order concerned us at that time and that if such an order had in fact been prominently posted we would almost certainly have seen it.

Marie Cronin Bratton, June 8, 1964
NOTARY PUBLIC of NEW JERSEY
My Commission Expires April 18, 1967

Dated

Address

June 1964 [illegible] 35 [illegible] E.O.
[illegible]
6 [illegible]
[illegible]
6 [illegible]
[illegible]
10 6.4.64 [illegible] 29 [illegible] Ave. Newark
[illegible] Newark
11 6.5.64 [illegible] 351 S. Burnett St E.O. N.J.
[illegible] 64 [illegible] 74 [illegible] N.J.
[illegible]

Marie Cronin Bratton June 8, 1964
NOTARY PUBLIC of NEW JERSEY
My Commission Expires April [illegible]

THE FOLLOWING DOCUMENTS ARE THE
BEST AVAILABLE.

We, the undersigned, affirm that we did not ever see posted anywhere in the plant of [illegible] Ballantine and Sons Brewery, in Newark, New Jersey, or in the plant of Liebmann Breweries, in Orange, New Jersey, or in the headquarters of any Local Union [illegible] to which we belonged, any decision and order issued by the National Labor Relations Board on March 4, [illegible]. We now know that the order was one in which the New Jersey Brewers Association was ordered to cease and desist from any arrangement whereby the Union determined the right of [illegible] employees at any of the plants in the New Jersey [illegible] at any of the other plants. And we now know that the Association was ordered to cease and desist from any arrangement whereby the Union was delegated exclusively the right to select [illegible] employees and the selection was based upon payment of union initiation fees or dues. And we now know that the order stated that the Union must cease and desist from causing the employers [redacted] to discriminate against employees in regard to hire, tenure of employment or any terms or conditions of employment except as permitted by law. [illegible] order [illegible] at that time and that if [illegible] order [illegible] it. [illegible] almost certainly [illegible]

Dated	Name	Address
[illegible]	[illegible]	[illegible]
6/7/64	[illegible]	30 [illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
6.8.64	Dominick [illegible]	3 [illegible]
	[illegible]	[illegible]
	[illegible]	[illegible]
	William [illegible]	70 Colonia N.J.
	[illegible]	[illegible]
	William [illegible]	[illegible]
	[illegible]	[illegible]
	[illegible]	[illegible]

[illegible] V

NATIONAL LABOR RELATIONS BOARD
TWENTY-SECOND REGION
[illegible] Federal Newark Building, [illegible] Street
Newark, New Jersey
[illegible]

April [illegible], 1984

Mr. Delbert [illegible] Danisman
Box 414
Main Post Office
[illegible], New Jersey

Dear [illegible]:

Re: New Jersey Brewery [illegible] et al
Case Number 2[illegible]

In response to your letter of April [illegible], 1984, this is to advise that the files in the above-captioned matter [illegible] returned to this office and [illegible] therefore unable to furnish you with copies of the documents requested.

I would suggest that you write to Mrs. Ida O. Creskoff, Clerk of the U. S. Court of Appeals for the Third Circuit, at [illegible] Court House, 9th and Chestnut Streets, Philadelphia, Pennsylvania, where the [illegible] enforcing [illegible] Decree of that court is on file. [illegible] the Clerk [illegible] may permit an inspection of the [illegible].

Very truly yours,

John J. Cuneo
Regional Director

Exht V.

NATIONAL LABOR RELATIONS BOARD

Washington 25, D.C.

April 20, 1964

Mr. Dalbert Earisman
Main Post Office
P. O. Box 414
E. Orange, New Jersey

Re: New Jersey Brewers Association, et al.
Case No. 22-RC-1786

Dear Mr. Earisman:

In accordance with your telephone request today, I have searched the formal file of Case No. 22-RC-1786, which is a fairly voluminous file going back to June 1962.

So far as Board orders are concerned, there are a number of procedural orders consolidating various cases or setting them down for hearing. There are no Board orders that I could find directing either the various locals concerned or the Joint Local Executive Board to take any specified action. Had such an order existed in the case, it most certainly would have appeared in the file. The earlier Board "Decision and Direction of Elections" dated January 29, 1953, in which the Board established the appropriate units and directed elections therein was published and will be found in 102 NLRB 800, which you may read in our Regional Office, or in most well-equipped law libraries.

So far as the file reveals, there was never any court enforcement of any Board order directed against the unions. The various unions did bring suit in Federal court to enjoin further Board action; United States District Court for the District of New Jersey, Civil Action No. 311-63. This action was dismissed by stipulation on January 17, 1964. I am sure the Clerk of Court would let you see the moving papers. Certain individuals represented by Harry Kay, Esq., 786 Broad Street, Newark, New Jersey, sued the unions in the Superior Court of New Jersey, Chancery Division, Essex County. I do not know the present status of that litigation, as the Board was not a party. I suggest that you contact Mr. Kay directly if you desire further details of that suit.

If you are not satisfied with the above information you may, of course, have your Washington representative visit the Board's Offices here to examine the formal file personally. Our Washington address is 1717 Pennsylvania Avenue, N. W. The same may be done, I presume, in the Regional Office of the Board at 744 Broad Street, Newark, New Jersey.

I hope this answers your question. I acknowledge the receipt of a copy of your letter of April 18 to George A. Leet, Esq.

Sincerely,

Sydney S. Asher, Jr.
Trial Examiner

cc: George A. Leet, Esq.
Associate Executive Secretary

MAR 11 1964

National Catholic Conference for Interracial Justice

21 West Superior Street · Chicago, Illinois 60610 · MOhawk 4-8222

Southern Field Service
1046 Baronne Street
New Orleans, La. 70113
523-2901

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EXECUTIVE DIRECTOR
Mathew Ahmann
DIRECTOR, SOUTHERN FIELD SERVICE
Henry A. Cabirac, Jr.

118

March 9, 1964

Dear Mr. Rachlin:

I have your welcome letter of February 27, and am glad that you had an opportunity to meet with the group of lawyers associated with the Catholic Interracial Council on San Francisco. I would be very happy to meet with you when you come through Chicago, or if I'm unavailable, you can arrange to meet with Mr. John Sisson of my staff. Please let me know just a little bit ahead of time if possible.

Very sincerely yours,

Matt Ahmann

Mathew Ahmann
Executive Director

MA:lh

Mr. Carl Rachlin, General Counsel
CORE
38 Park Row
New York 38, N. Y.

Dear Mr Ahmann
thank you for your letter
of the 9th. I will let you
know as soon as I can
when I can be in Chicago.
If I may suggest this,
have you able to give any
thought to approaching
lawyers who
will be able to

help this summer in ~~those~~ the south we are starting to make requests of lawyers to spend a legal vacation working in the south — for example Leo Pfeffer, has already agreed to go south for the civil rights movement.

I enclose a copy of Father Drinan's remarkable speech made at our legal conference in New York. ~~If you already have a copy file~~

Cordially

VETERANS ADMINISTRATION
HOSPITAL
EAST ORANGE, NEW JERSEY

March 12, 1964

YOUR FILE REFERENCE:

IN REPLY REFER TO: 5253-135

Mr. Carl Rachlin, General Counsel
Congress of Racial Equality
38 Park Row
New York 38, New York

Dear Mr. Rachlin:

This is to acknowledge your letter of February 27, 1964 and to advise that we will comply with your request to postpone the Buchanan Hearing which was scheduled to take place under the prescribed procedure of Executive Order 10925.

With respect to the objection that has been raised regarding Mr. Horton, while we pose no objection to replacing him, please know that no complaint of his having discriminated against a minority group employee has been made and we regard him as one of our most capable and fair-minded officials.

Very truly yours,

H. W. KENNEY, ~~M. D.~~
Hospital Director

cc NY to
Mrs Braxton

re 5253-135

Dear Dr. Kenney
I was pleased to receive your ~~letter~~ letter of March 12, adjourning the Buchanan. I trust that ~~this entire~~ the question

Show veteran's full name and VA file number on all correspondence. If VA number is unknown, show service number.

raised by CORE
~~matter~~ can be resolved very soon in
a satisfactory ~~matter~~ manner.

V T G

WEST ESSEX CHAPTER

Post Office Box 414
Main Post Office
East Orange, N. J.

March 26, 1964

Mr. Carl Rachlin
Chief Counsel
Congress of Racial Equality
38 Park Row
New York, New York 10038

Dear Mr. Rachlin:

In regard to the VA project, East Orange, New Jersey, and the report of the President's Committee on Equal Opportunity in Employment, the West Essex Chapter of CORE, at the Executive Board meeting held Monday, March 23rd decided on the following:

1. Acceptance of the President's Committee's report with appropriate notification to the Press, President's Committee, concerned Congressmen and Senators, VA Central Office, Dr. Kenney, Hospital Director. Acceptance will be in terms of the principles and concrete proposals specified with a looking forward to full implementation of the remedial changes outlined.

2. The formal hearings yet to be adjudicated will necessitate CORE'S continued presence and assistance. The Sub-Committee working with your office will continue until this task is completed and then will be abolished.

3. Effective the ninth month of the one year monitoring period established by the President's Committee, the Chapter will appoint an ad hoc committee to assess the progress being made on points specified for correction by the President's Committee. If circumstances warrant, a review team will re-assess the situation prior to the ninth month.

The above action described will be deferred until we receive your response. Your concurrence and suggestions are welcome.

Sincerely,

PETER J. COLE, Chairman
for the Executive Board

West Essex Chap.

CONGRESS OF RACIAL EQUALITY
CORE
WEST ESSEX CHAPTER

Post Office Box 414
Main Post Office
East Orange, N. J.

MAR 27 1964

March 26, 1964

Mr. Carl Rachlin
Chief Counsel
Congress of Racial Equality
38 Park Row
New York, New York 10038

Dear Mr. Rachlin:

In regard to the VA project, East Orange, New Jersey, and the report of the President's Committee on Equal Opportunity in Employment, the West Essex Chapter of CORE, at the Executive Board meeting held Monday, March 23rd decided on the following:

1. Acceptance of the President's Committee's report with appropriate notification to the Press, President's Committee, concerned Congressmen and Senators, VA Central Office, Dr. Kenney, Hospital Director. Acceptance will be in terms of the principles and concrete proposals specified with a looking forward to full implementation of the remedial changes outlined.

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The above action described will be deferred until we receive your response. Your concurrence and suggestions are welcome.

Sincerely,
Peter J. Cole
PETER J. COLE, Chairman
for the Executive Board

Dear Peter
Thank you for your letter of the 26th but I have not seen the President's Committee report. Can you give me the facts
Carl

copy to Jenny

Salandos in Newark - att'y

pertinent parts? Regards

CONGRESS OF RACIAL EQUALITY
WEST ESSEX CHAPTER Main Post Office, Box 414, East Orange, N.J. OR 6-7100

57 Willow Lane
Roselle, New Jersey

April 18, 1964

RE: New Jersey Brewers Association, et al.
Case Nos. 22-CB-561, 562
22-RC-1786

Mr. George A. Leet
Associate Executive Secretary
National Labor Relations Board
Washington 25, D. C.

Dear Mr. Leet:

This is in reply to your letter of April 16, 1964. We are not accepting the current stipulations because they do not eliminate the basic unfair labor and discriminatory practices that have been in existence for several years. Further, thirty-three of us have in fact fulfilled requirements for regular employees, though the union did not demand this status for us. Therefore we think that we have a right to back pay, to a starting date of seniority status that extends years behind the present date, and perhaps damages.

We are unable to interpret case #22-RC-1786 because the Regional Office has apparently destroyed the order, and we cannot examine it in detail. This sort of thing takes time for men who lack the financial power of the NJ Brewers Association or the Teamster's Union.

Address your reply to our representatives West Essex CORE.

Sincerely,

Henry Oxfeld

C
O
P
Y

CONGRESS OF RACIAL EQUALITY
WEST ESSEX CHAPTER Main Post Office, Box 414, East Orange, N. J. ORange 6-7100

April 29, 1964

C
O
P
Y

57 Willow Lane
Roselle, New Jersey

RE: New Jersey Brewers Association, et al.
Cases Nos. 22-RC-1786
22-CB-561-562

Mr. George A. Leet
Associate Executive Secretary
National Labor Relations Board
Washington 25, D. C.

SUBJ: Elaboration of Statement Contained in my Letter of April 18th

Dear Mr. Leet:

This is to correct paragraph two of my letter of April 18th. Case No. 22-RC-1786 should be Cases No. 22-CA-15, 22-CB-14, 22-CA-89, and 22-CB-43. A full response to your letter of April 7th requesting a reply by April 20th was deferred in hope of receiving your assessment of the relevancy of the September 18, 1959 Third Court of Appeals enforcement decree against the N.J. Brewers Association and Teamsters Locals 843, 153 and 4. I am therefore taking this opportunity to elaborate my reply of April 18, 1964. My discussion will be in two parts: The September 18, 1959 court decree enforcing the March 24, 1959 Order (abstracted); and current case #22-RC-1786.

I. In September 1959 - The N.J. Brewers Association was ordered to cease and desist: from any arrangement whereby the Union determined the right of regular employees upon loss of employment at any of the plants, to replace Seasonal or Temporary workers at any of the other plants.

From any arrangement whereby the Union was delegated exclusively the right to select Seasonal or Temporary employees and the selection was based on payment of Union initiation fees or dues.

Local 843 and the Brewery Workers Joint Local Executive Board were ordered to cease and desist from a similar set of practices. The local and joint board were ordered to cease and desist from causing the employers to discriminate against employees in regard to hire, tenure of employment or any terms or conditions of employment except as permitted by law.

Instructions were given that copies of the notice be posted at respective plants for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted.

COPY COPY

None of the above was carried out, in fact restrictive clauses embodying action to be stopped have been written into each union contract since 1959.

It is my contention that Seasonal A's, including myself, would be regular "book men" with starting date seniority rights if the September 1959 order had been effected. Therefore the N.J. Brewers Association and Teamsters Locals 843, 153 and 4 have circumvented the Court order and are now in violation to the continuous detriment of Seasonal A's. Other parts of the September 1959 order will not be covered here, however, I sincerely request a full study of the document in an appeal for justice.

II. RC 22-1786 - I charge unfair labor practices both against the N. J. Breweries and Teamsters Locals. Before I can accept the stipulations, the following should be included:

1. Regular status with starting date seniority and Retroactive Benefits including hospitalization and pension.

2. Reimbursement of Union dues for period of non representation by the locals.

3. Back pay to our starting date including holidays and vacations.

4. Recovering of legal fees.

5. Elimination of the Seasonal "A" status leaving two classifications of employees, Regulars and Casuals. This would remove the second class status and exploited position of Seasonal A employees which at present are not only immoral but not in the public interest. In fact under the present system of Regulars, Seasonal A and Seasonal B, gross irregularities and abuses have occurred. For example 33 men fulfilled requirements in 1960 for regular status which was never granted. Further seniority breaks have been given until 1962 to maintain the exclusion policies preventing Seasonal A's from attaining the status of regulars. Since 1962, the requirements to achieve regular status have been doubled making it virtually impossible to gain regular status. I contend that this has been employed to keep minority groups out of the Union in regard to regular status. Of approximately 3500 men in the Union, there are no Negroes or minority group memberships, thus leaving lily white locals of regulars. We request that corrective action considered be reflective in the contract now being negotiated.

For these reasons I cannot in full honesty accept the stipulations as set forth.

Sincerely,

HENRY OLFELD

ADDENDUM:

We respectfully direct your attention to the possible alteration in Seasonal A employment status by the companies deliberating not calling back Seasonal A's to work one day in 90 days to preserve their status pending final adjudication of the issues. As such the complainants stand to lose based on prolongation of the proceedings by being reduced to status of a new employee.

COPY

COPY

Rachlin

Schaffer

PROSKAUER ROSE GOETZ & MENDELSOHN
300 PARK AVENUE
NEW YORK, N. Y. 10022

APR 30 1964

Carl — look over

JOSEPH M. PROSKAUER
ALFRED L. ROSE
NORMAN S. GOETZ
WALTER MENDELSOHN
BURTON A. ZORN
ALFRED APPEL
WILBUR H. FRIEDMAN
CHARLES LOOKER
PHILLIP W. HABERMAN, JR.
HOWARD LICHTENSTEIN
HAROLD H. LEVIN
JAMES J. FULD
GEORGE M. SHAPIRO
GERALD SILBERT
WILLIAM P. HIGGINS, JR.
EDWIN P. KAUFMAN
EDWARD SILVER
PHILIP J. HIRSCH
JACOB IMBERMAN
ROBERT DILLOF
GEORGE G. GALLANTZ
ROBERT J. LEVINSOHN
ANDREW D. HEINEMAN

CABLE ADDRESS
"ROPUT"

TELEPHONE
MURRAY HILL 8-7300
(AREA CODE 212)

April 29, 1964

Mr. James Farmer
Congress On Racial Equality
38 Park Row
New York, New York 10038

Dear Mr. Farmer:

I am labor counsel for the Brewers Board of Trade, Inc., which represents the F. & M. Schaefer Brewing Company, Liebmann Breweries, Inc., Jacob Ruppert and the Jos. Schlitz Brewing Company.

For many months now, the industry has been meeting with representatives of CORE in order to help resolve the demand for the employment of minority group employees in the brewing industry in New York City. Principally, the meetings have been held with Norman Hill and Carl Rachlin. Despite the efforts of the brewing industry to be helpful in opening up areas of employment for minority employees, its efforts have been met with resistance by the CORE group. As you know, I am sure, one of the breweries has been subject to a series of demonstrations in the recent past, despite the fact that the actual employment record of this brewery in the area where it controls employment has been outstanding in the hiring of minority employees.

I appreciate the possibility that the import of the issues we are all facing these days does not, in many cases, permit of absolute answers. On the other hand, both my clients and I request that we have the opportunity of speaking with you and with whomever else you wish to review the entire situation and to explain to you personally and directly the position of the industry.

Sincerely yours,

Edward Silver
Edward Silver

ES:nfm
cc: Mr. Norman Hill

Ballentine
Brewers
Liebman
Pabst
Hoffman

WEST ESSEX CHAPTER, Post Office Box 414, East Orange, N. J. OR 6-7100

June 22, 1964

Mr. Arnold Ordman
General Counsel
National Labor Relations Board
Washington 25, D. C.

My dear Mr. Ordman:

We are grateful for your interest in our case, and in accordance with your telegram of June 17th are sending you the following information. This information includes both factual material and interpretive points of view that may help you to arrive at an equitable decision. We are arranging the information into three broad categories: first, the apparent violations of the 1959 consent decree (22 CA 15, 22 CA 89, 22 CB 14, 22 CB 43); second, the good faith requirement of contracts and our particular understanding of discrimination, both racial and general, in its relation to the public interest, the inadequacies of the Regional Office and finally we are also including supporting documentation.

Violation of the 1959 consent decree falls into two broad categories that are not strictly discrete. First, there are those violations that exist in terms of the contracts themselves. Next, there are extra-contractual violations. The contract that we have obtained and are able to study is the 1962 contract.

1. Seniority for regular employees is defined by starting date of employment (page 16) and seniority for seasonal A employees is defined by number of days worked (page 21).

2. Tenure for regular employees is defined on pages 17-18, and for seasonal A employees as defined on page 18 are inequitable (also see exhibit #1).

3. Other discriminatory practices in the contract have been described in testimony for Case #22RC1786. These include pension plans, vacations, pay, transfer rights, etc.

4. Prior to 1962, seasonal A employees were given "seniority breaks" by the company to prevent their attaining regular status. See exhibit #2. At no time did the union protest this practice aimed at their own members; since the men themselves strongly objected to these seniority breaks and since regular status in the company is precisely equivalent to regular union status, these seniority breaks seem to us clear indication that the unions and the company were in collusion in determining tenure rights, etc. of employees. Although this practice may not have been relevant in 22RC1786, which was initiated in 1962, it certainly is relevant in determining adherence to the 1959 consent decree.

5. Regular employees do not lose regular employee status either by resignation or discharge for reasonable cause. Seasonal A employees who are discharged or resign cease to be seasonal A's (pages 22-23).

6. No claim can be made for contractual distinctions on the basis of probationary employment, or on any analogy to apprenticeship programs. Seasonal A employees do the same work, have the same skill, pay the same dues, and have demonstrated over a period of many years the same degree of reliability as regular employees. For that matter, many seasonal A's have worked in the industry longer than many regulars. Yet when a Brewery goes out of business, regulars such as 15 men from Krueger displaced Seasonal A's, a direct violation of the 1959 order. There is not even a valid case for the present arrangement's contributing to job security, because allowing employees to become regulars on a reasonable basis of seniority would still fully protect those members who have greater seniority. The contracts therefore are plainly exclusive. With this evident exclusiveness of contract, it is surely significant that none of the 3500 regular employees are non-white. The only non-white employees are in the seasonal category. (See, for NLRB precedent, paragraphs 8 and 10 of exhibit 3).

Following are the extra-contractual violations of the 1959 consent decree.

1. All of our contacts within the brewery assert that they did not see the consent decree posted either within the brewery or the union hall (see exhibit 4). They further tell us that foreman and shop stewards also admit that they did not see the order posted.

2. Members have been denied regular status after having served the required term in the brewery, because they did not work the required length of time in a single union local. We have statements attesting to this fact made on December 8, 1961, by Mr. Bernard Klein. He has written evidence of this in a letter by Mr. Carl J. Horn, a management employee of Ballantine & Sons Brewery. Nearly 30 employees met requirements for regular status but such was never granted.

3. To our knowledge, a group of fifteen employees of a Ballantine Distributor Company in Somerville, New Jersey, have been recently transferred to the Newark Brewery and given regular status. We have been unable to get more precise information on this situation, but it certainly deserves close investigation.

4. Recently, an incident has come to our attention that clearly indicate union determination of regular employment. One of the men whom we represent was told by a union official that if he could get CORE to drop the cases, the group of Seasonal A's would be given regular status for a two-year probationaly period and that after that, if they qualified, they would be given full regular status". In this connection, it should be noted again that union regular status is identical with regular employee status in breweries. For same reason, in our conference with the officials of the New Jersey Brewers' Association, this fact embarrassed the members of the association.

5. Until March of this year, when members of CORE met with officials of the New Jersey Brewers' Association, the Breweries failed to maintain duplicate lists of seasonal A employees to control accurate seniority status. This was admitted by Mr. Thomas Hayes, Assistant Executive Director of the Association.

Our lack of confidence in the Regional Office is based on the following examples of incomprehensible conduct:

1. Mr. Cuneo directed us to the Third Circuit Court of Appeals for an order that was not there (see exhibit 5). Further, since Mr. Asher had indicated by telephone that such an order, if it existed, should be in the Regional Office, we cannot understand why it was transferred from the Regional Office so quickly, Since the Regional Office was the only logical enforcement agency. Finally, we find it hard to understand why the Washington Office of NLRB was not aware that there was ever any court enforcement of any board order against the union. (See exhibit 6, and note George A. Leet's letter to Miss Edyth Jones of April 27th). Finally, we question Mr. Cuneo's cavalier dismissal of the 1959 decree as not relevant to the 1962 proceedings and his statement that the two cases were based on an "entirely different theory" (see exhibit 7).

2. Mr. Cooleen's brief requesting permission to appeal from the rulings of the trial examiner in cases 22-CB-562 and 22-RC-1786 seem to us trivial and irresponsible. He states, "The complaint raises novel and not clearly resolved questions of law". Certainly for an alert Regional Office, eager to achieve justice, novel questions of law should represent a challenge to further refine existing legislation by establishing precedent, or at least allow higher authorities to resolve them. He also states, "The case presents close questions of fact which contribute to a prolonged hearing resulting in substantial expense to the government and the parties". Expense to the Teamster's Union and to the New Jersey Brewers' Association should hardly be a concern of the United States Government. As for the men who complained, Mr. Cooleen's argument simply negated the effect of $5,000 that they had already spent. And since when has the United States Government been afraid of incurring expense in securing justice? Mr. Cooleen's arguments are beyond belief, unless we assume some motive utterly at variance with the motives properly belonging to a public servant.

CORE's interest in this case allows us to see its implications in terms of broad principles of democracy, equal opportunity, and justice. These have consistently been missing in the brewing industry, for nearly twenty years. The fact that the 3500 regular brewery employees are 100% white, despite deaths, retirement, resignations, discharges; despite the relatively unskilled nature of the work, and despite the 40% Negro population in the Newark area, is clear indication of this rank discrimination. Protestations of companies and unions and legal briefs submitted that the present situation is non-discriminatory are sheer and utter nonsense. The specific discrimination against which we now protest is discrimination against classes of union members. But this kind of discrimination clearly camflouges racial discrimination. So long as the NLRB makes its decisions in terms of the public interest, it must take into account the evil results of a system that excludes minority groups from full participation in union benefits. Further, the fact that the present system makes the attainment of regular status well-nigh impossible for present seasonal employees, and does so without any reasonable basis indicates that the contracts themselves are drawn up in bad faith. Considering this bad faith, it is patently absurd to rest on any literal reading of the contracts. The actual working out of the system must be considered. Finally, the non-observance of the 1959 order indicatesto us that more stringent methods are necessary to ensure compliance with NLRB orders; perhaps these methods may simply be the establishment of a more effective Regional Office.

*In addition to #4, under Extra-Contractual violations, we are frankly puzzled by the following statements that are circulating around, i.e., that the NLRB intends to offer the Seasonal "A" group the following terms to be included in a written contract:

1. The Seasonal "A's" will be blanketed as regulars immediately except (a) they could still be bumped by other regulars for the first twenty-four months after which the "bumping" privileges enjoyed by the other regulars against the then former Seasonal "A's" would be removed. (b) Seasonal "A's" would receive the benefits previously offered.

This alleged set of terms supposedly forthcoming from the NLRB would then afford the unions and the companies a way of avoiding the basic issue of justice for Seasonal "A's" group by circumventing starting date seniority status and enjoyment of the full privileges of regulars after two years of protracted litigation.

We are unable to understand what this represents since we have had such excellent relationships, cooperation and communication with the NLRB. If these are mere rumors it will be important to put an end to them. We feel such rumors have an undermining effect on the successful resolution of these vital issues.

Sincerely,

DAVID L. ANDERSON

DELBERT L. EARIEMAN

(MISS)EDYTH JONES

(MRS.)NANCY I. ANDERSON

January 18, 1965

Mr. Louis Smith
CORE Northeast Regional Director
48 West 125th Street
New York 27, N.Y.

Re: Brewery Industry

Dear Lou,

At the NAC Steering Committee meeting this past weekend Bob Curvin and I briefly discussed some problems in the brewery industry. After some talk it occurred to me that the Northeast region is very able to handle, on a regional basis, a confrontation with the brewery industry.

Perhaps we ought to set up a regional committee which would make a broader attack on discrimination and, at the same time, get us readier for economic resistance if it is necessary.

If you think this is reasonable, why don't you, Bob, Harvey and I discuss this.

Regards,

Carl Rachlin
General Counsel

cc: Mr. Robert Curvin
Mr. Harvey Cummings
Dr. George Wiley

CR:hdl

copies

Dear Lou
Would you have
time to discuss a regional
Brewery Industry
Committee. Bob Curvin
expressed great
interest
CR

PROSKAUER ROSE GOETZ & MENDELSOHN
300 PARK AVENUE
NEW YORK, N. Y. 10022

JOSEPH M. PROSKAUER
ALFRED L. ROSE
NORMAN S. GOETZ
WALTER MENDELSOHN
BURTON A. ZORN
ALFRED APPEL
WILBUR H. FRIEDMAN
CHARLES LOOKER
PHILLIP W. HABERMAN, JR.
HOWARD LICHTENSTEIN
HAROLD H. LEVIN
JAMES J. FULD
GEORGE M. SHAPIRO
GERALD SILBERT
WILLIAM P. HIGGINS, JR.
EDWARD SILVER
PHILIP J. HIRSCH
JACOB IMBERMAN
ROBERT DILLOF
GEORGE G. GALLANTZ
ROBERT J. LEVINSOHN
ANDREW D. HEINEMAN

CABLE ADDRESS
"ROPUT"

TELEPHONE
MURRAY HILL 8-7300
(AREA CODE 212)

February 25, 1965

Mr. Carl Rachlin
CORE
38 Park Row
New York, New York

Dear Carl:

Enclosed is a draft of the proposed agreement between CORE, the Industry and the Unions. Please let us have your comments this afternoon.

Cordially,

Mart

Martin J. Oppenheimer

Carl:
Bob Curvin c̄ you
~~announce signing~~
what is signing date?

MJO/dk
Enclosure
Hand Delivery

AGREEMENT

AGREEMENT made this day of March, 1965 by and between the Congress of Racial Equality (hereinafter referred to as CORE), Rheingold Breweries, Inc., Jacob Ruppert, F. & M. Schaefer Brewing Co. and Jos. Schlitz Brewing Co., represented by the Brewers Board of Trade, Inc., Piel Bros., Inc. (hereinafter referred to as the Companies), Brewery Workers Local Union 3 and Brewery Workers Local Union 46, International Brotherhood of Teamsters (hereinafter referred to as the Union).

WITNESSETH:

In the interest of assuring full employment opportunities for all individuals, regardless of race or color, CORE, the Companies and the Union hereby agree as follows:

1. The Companies will provide instruction for employees and prospective employees who wish to achieve chauffeur licenses required for the driving of the Companies' vehicles, and will train employees and prospective employees to operate the hi-lo equipment used in the Companies' operations. The scope of this training program will be discussed with CORE and with the Union. The Companies will also endeavor to provide a program to train present white collar employees in clerical and mechanical skills required for higher paying white collar positions.

2. The Companies, the Union and CORE will jointly develop a communications program for the purpose of informing minority groups in the Metropolitan area of the job opportunities available in the Industry.

3. (a) The parties agree to discuss the standards to be applied by the Union hiring hall in assigning men without seniority to available jobs in the Industry.

(b) The parties agree to discuss the circumstances under which the Union hiring hall registration fee shall be collectible.

(c) The parties agree to discuss the question of whether employees who shape the hiring hall and perform work under the jurisdiction of both Local Union 3 and Local Union 46 shall receive credit for the accumulation of such work, for purposes of their standing in the hiring hall.

(d) In the event the parties are unable to reach a full agreement with respect to the items set forth in Items (a), (b) and (c) above, any unresolved items shall be submitted to Judge Hubert Delaney for final and binding resolution.

CONGRESS OF RACIAL EQUALITY

By_____________________________

BREWERS BOARD OF TRADE, INC.

By_____________________________

PIEL BROS., INC.

By_____________________________

LOCAL UNION 3, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

By_____________________________

LOCAL UNION 46, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

By_____________________________

file copy

CORE Interoffice Memo

TO: Marvin Rich

February 25, 1965

FROM: Carl Rachlin

RE: Brewery Industry

Proskauer's office would like you to arrange wihh them the convenient time to sign the brewery agreement. I will not be here next week, if you want me to sign. Otherwise, it can be done wihhout me.

Harvey Cummings played an important role in all this and should be there.

Attached is the contract and copy of the letter from Mr. Oppenheimer.

CR:hdl

3/19/65 Contract to be signed
3/26 at Silver's office
at 2 P.M.
Advise Ware, Curvin, Cummings
Rich re TV + radio

PROSKAUER ROSE GOETZ & MENDELSOHN
300 PARK AVENUE
NEW YORK, N.Y. 10022

JOSEPH M. PROSKAUER
ALFRED L. ROSE
NORMAN S. GOETZ
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ROBERT J. LEVINSOHN
ANDREW D. HEINEMAN

CABLE ADDRESS
"ROPUT"

TELEPHONE
MURRAY HILL 8-7300
(AREA CODE 212)

APR 19 1965

April 16, 1965

Mr. Carl Rachlin
Congress on Racial Equality
38 Park Row
New York 38, New York

Re: Brewers Board of Trade--Core.

Dear Carl:

This will confirm my conversation with you of today that the signing of the agreement between the Brewers Board of Trade, the Union and Core will take place in my office on Tuesday, April 20, 1965, at 4:00 p.m.

Sincerely,

Ed

Edward Silver

ES:nfm

1) Advised Joyce Ware
4/19 2) Phoned Harvey Cummings
3) Bob Curvin - left message -

sent letter
to [illegible]
copy
file

AGREEMENT

AGREEMENT made this 26th day of May, 1965 by and between the CONGRESS OF RACIAL EQUALITY (hereinafter referred to as CORE), Rheingold Breweries, Inc., Jacob Ruppert, The F. & M. Schaefer Brewing Company and Jos. Schlitz Brewing Company, represented by the BREWERS BOARD OF TRADE, INC., PIEL BROS. INC. (hereinafter referred to as the Companies), BREWERY WORKERS LOCAL UNION 3 and BREWERY WORKERS LOCAL UNION 46, INTERNATIONAL BROTHERHOOD OF TEAMSTERS (hereinafter referred to as the Union).

WITNESSETH:

In the interest of assuring full employment opportunities for all individuals, regardless of race or color, CORE, the Companies and the Union hereby agree as follows:

1. The Companies will provide instruction for employees and prospective employees who wish to achieve chauffeur licenses required for the driving of the Companies' vehicles, and will train employees and prospective employees to operate the hi-lo equipment used in the Companies' operations. The scope of this training program will be discussed with CORE and with the Union.

2. The Companies, the Union and CORE will jointly develop a communications program for the purpose of informing minority groups in the Metropolitan area of the job opportunities available in the Industry.

3. (a) The parties agree to discuss the standards to be applied by the Union hiring hall in assigning men without seniority to available jobs in the Industry.

(b) The parties agree to discuss the circumstances under which the Union hiring hall registration fee shall be collectible.

(c) The parties agree to discuss the question of whether employees who shape the hiring hall and perform work under the jurisdiction of both Local Union 3 and Local Union 46 shall receive credit for the accumulation of such work, for purposes of their standing in the hiring hall.

(d) In the event the parties are unable to reach a full agreement with respect to the items set forth in Items (a), (b) and (c) above, any unresolved items shall be submitted to Judge Hubert Delaney for final and binding resolution.

CONGRESS OF RACIAL EQUALITY

By

BREWERS BOARD OF TRADE, INC.

By

PIEL BROS. INC.

By

LOCAL UNION 3, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

By

LOCAL UNION 46, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

By

SIPSER, WEINSTOCK & WEINMANN
ATTORNEYS AT LAW
FIFTY BROAD STREET
NEW YORK 4, N.Y.
WHITEHALL 3-8181

I. PHILIP SIPSER
HARRY WEINSTOCK
RICHARD A. WEINMANN
BELLE HARPER
SIDNEY S. BERMAN
RICHARD L. DORN

June 4, 1965

HAND DELIVERY

Carl Rachlin
General Counsel
Congress of Racial Equality
38 Park Row
New York 38, New York

Re: Brewers Board of Trade and
Piel Bros Inc., Locals 3
and 46, IBofT, and Core

Dear ~~Mr. Rachlin:~~ Core

I am enclosing herewith an original and seven copies of the agreement with Core and the Brewing industry. I have been authorized by Locals 3 and 46 to sign the agreement on their behalf. Would you therefore have Core sign the stipulation and return at least three copies to my office. The other copies should of course go to Mr. Silver. I assume you will retain the original for your files.

If there are any further questions in connection with this matter, please advise me.

Very truly yours,

I. Philip Sipser

IPS/srs
Enc.

cc: Edward Silver, Esq.
Proskauer Rose Goetz & Mendelsohn, Esqs.
300 Park Avenue
New York, New York 10022

June 4, 1965

Edward Silver, Esq.
300 Park Avenue
New York, New York

Dear Ed:

Enclosed are two signed copies of the agreement amongst CORE, Brewers Board of Trade, Inc., and Brewery Workers Locals 3 and 46 IBT. I trust we can arrange in the very near future, a public signing of this document.

With kindest personal regards,

Sincerely,

CARL RACHLIN
General Counsel

CR/cs
Encs.

mtg on ~~before~~ 3/12/64
Brew Cos + Unions
CR
Dickswell
NALC
men

CR made the st- proposals on next page

CR also proposed that Cos + Unions admit guilt as of assert these persons then legally they can be given priority

this agreement applies only to this grievance and is not General

Brewey

union proposal

DRAFT

[N.D.]

AGREEMENT made this day of between the NEW YORK CITY COMMISSION ON HUMAN RELATIONS, THE NEGRO-AMERICAN LABOR COUNCIL, LOCALS 3 AND 46, INTERNATIONAL BROTHERHOOD OF TEAMSTERS and THE BREWERS BOARD OF TRADE, representing F & M SCHAEFFER BREWING COMPANY, RHEINGOLD BREWERIES, INC., JOSEPH SCHLITZ BREWING COMPANY, JACOB RUPPERT BREWING COMPANY, PIELS, INC.,

WHEREAS, certain complaints concerning discrimination as to race have been filed with the New York City Commission on Human Relations, (hereinafter referred to as the "COMMISSION") by the Negro-American Labor Council (NALC), hereinafter referred to as "NALC", on behalf of certain named individuals and

WHEREAS, these complaints named Locals 3 and 46, International Brotherhood of Teamsters (hereinafter referred to as the "UNIONS"), and a number of companies in the brewing industry, (hereinafter referred to as the "COMPANIES") as having engaged in the aforesaid discriminatory practices, and

WHEREAS, the Union and the Companies have denied that they have been or are engaged in such discriminatory practices, and

WHEREAS, at the urging of the New York City Commission on Human Relations, all parties desire to amicably adjust and settle all differences and complaints filed with the aforesaid Commission.

NOW, THEREFORE, the undersigned parties agree as follows:

BREWERY

not ~~previously~~ covered by ~~the~~ employees having achieved seniority prior to this date

1. The Companies and the Union agree that they will make no effort to interrupt the continuous employment ~~use their best efforts to provide sufficient employment~~ and employment opportunities so that the following named employees and all other persons similarly situated, may earn their Group II seniority in accordance with the applicable provisions of the collective bargaining agreement between the Companies and the Union. and all work available to Group [illegible] will be ~~made available~~ distributed on an equitable basis without favoritism for any reason.

2. In order to insure that the employment opportunities referred to in paragraph 1 hereof are uniformly and non-discriminatorily applied, the parties signatory hereto, agree to provide the following machinery for the enforcement of this agreement:

they still will prevent people from getting their [illegible] preferential [illegible]

a. Where the named individuals or persons similarly situated, claim that the provisions of paragraph 1 hereof are being violated because of the race, creed, color or national origin, then such individuals or other persons similarly situated, may present either individually or through the NALC, CORE, NAACP or any other recognized Civil Rights organization, notice of intent to file a grievance or complaint to the Union and the Company within five working ~~five days~~ after the act complained of occurred. ~~and~~ the complaint shall be filed ~~two weeks~~ within thirty days later.

b. If the complaint is satisfactorily adjusted then the matter will be deemed settled; if not, the parties agree that such unresolved grievance may be submitted to

an ~~as~~ arbitrator within 5 days after the grievance has either been denied or not satisfactorily resolved.

how to select arbitrator

c. The arbitrator shall then schedule a hearing which shall be not later than 10 days after notice has been received by him of the unresolved complaint.

d. The arbitrator after hearing all of the evidence shall render his decision 5 days after the hearing has closed. Such decision shall be final and binding upon the parties to such arbitration.

e. The parties agree that the arbitrator shall only have the authority to interpret the provisions of this agreement and shall have no power to alter, modify or delete any of the terms of the collective bargaining agreement between the Company and the Union.

f. The award of the arbitrator shall be ~~un~~enforceable in any court of law having jurisdiction.

Dated:

THE NEGRO-AMERICAN LABOR COUNSEL

By:________________________

APPROVED:

NEW YORK CITY COMMISSION FOR HUMAN RELATIONS

By:________________________

BREWERY WORKERS LOCAL 3, INTERNATIONAL BROTHERHOOD OF TEAMSTERS

By:________________________

BREWERY DELIVERY LOCAL 46, INTERNATIONAL BROTHERHOOD OF TEAMSTERS

By:________________________

THE BREWERS BOARD OF TRADE

By:________________________

City of New Orleans vs Smith, Doratha March, 1964

State Historical Society of Wisconsin

Please Retain Original Order

Box 35
Folder 27

FIRST MUNICIPAL COURT
PARISH OF ORLEANS
CITY OF NEW ORLEANS
STATE OF LOUISIANA

CITY OF NEW ORLEANS
VS.
DORATHA SMITH, et al
77124-A

* *

MEMORANDUM TO SUPPORT MOTION TO QUASH

MAY IT PLEASE THE COURT:

I

THE AFFIDAVIT IS FATALLY DEFECTIVE IN THAT IT LACKS THE CLARITY REQUIRED BY THE SIXTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES AND THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.

A. Due Process requires that an ordinance give notice of what conduct is criminal.

It has been held repeatedly, by the United States Supreme Court, that an ordinance or statute violates the due process clause of the Fourteenth Amendment if it fails (1) to give fair notice of what it encompases and (2) to provide the tried with a sufficiently definite standard of guilt to avoid conviction on an ad hoc basis; Lanzetta v. New Jersey 306 U. S. 451; Connally v. General Construction Co., 269 U. S. 385; Musser v. Utah, 333 U. S. 95; Winters v. New York, 333 U. S. 507, 519.

As the United States Supreme Court said in Connally, 269 U.S. at 391):

> "...a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the First essential of due process of law."

Similarly, in Lanzetta, the Court defined the fair notice required by due process as 306 U.S. at 453:

> "...no one may be required at peril of life, liberty or property to the meaning of penal statutes. All are entitled to be informed as to what the state commands or forbids..."

Mr. Justice Harlan in his concurring opinion in Garner v. Louisiana 82 S. Ct. 248, at page 274, said:

> "While Cantwell was not explicitly founded on that premise, it seems to me implicit in the opinion that a statute which leaves the courts in uncertainty as to whether it was intended to reach otherwise constitutionally protected conduct must by the same token be deemed inadequate warning to a defendant that his conduct has been condemned by the state..."

Thus, when a statute gives a defendant insufficient notice of conduct prohibited, his conviction is invalid.

B. 828 MCS 42-90 did not give required notice.
(1) 42-90 consist of eight (8) subsections and defendants are left to determine under which sub section they are charged.

The petitioners engaged in picketing in front of the Loew's State Theater on Canal Street in New Orleans in protest of the refusal of the management of said Theater to sell them and other Negroes tickets to said theater. The petitioners got in the ticket line and requested tickets and were refused service. The police told them they would not be permitted to request tickets again. Later when they got in line to again seek to buy tickets the police arrested them and charged them with "Refusing to move on."

Nothing in the ordinance under which the defendants are charged clearly and unmistakably prohibits an individual from peaceful picketing or attempting to purchase theater tickets for the purpose of protesting racial discrimination.

The Supreme Court of Louisiana has repeatedly recognized that under our State Constitution fair notice is an element of due process. See, State v. Christene, 239 La. 259, 118 So (2d) 403 (1960); State v. Sanford, 203 La. 961, 14 So. (2d) 778. State v. Kraft 214 La. 351, 37 So (2d) 315 (1948). In State v. Kraft, supra, the Court explained the requirement of certainty as follows,

> "...it is sufficient to say that a criminal statute, in order to be valid and enforceable, must define the offense so specifically or accurately that any reader having ordinary intelligence will know when or whether his conduct is on the one side or the other side of the border line between that which is and that which is not denounced as an offense against the law."

II., III. & IV.

THE REFUSAL TO MOVE ON ORDINANCE(828 MCS 42-90) UNDER WHICH PETITIONERS ARE CHARGED IS UNCONSTITUTIONAL IN ITS APPLICATION IF CONSTRUED TO PROSCRIBE PEACEFUL PICKETING OR ATTEMPTS TO BUY TICKETS.

828 MCS 42-90, the ordinance under which the petitioners are charged is being used to make peaceful picketing and attempts to buy tickets illegal on the theory that anyone who refused to move on is "an idle and disorderly person."

THORNHILL v. Alabama, 310 U. S. 88 (1940) held that peaceful picketing was within the liberties protected by the First and Fourteenth Amendments. Thornhill further held that such interest as the state had in protecting public peace is not substantial enough to constitutionally support the application made of the statute.

In Garner v. Louisiana, 368 U. S. 157, 82 S. Ct. 248, Mr. Justice Harlan said at 272:

> "... when a state seeks to subject to criminal sanctions conduct which, except for a demonstrated paramount state interest, would be within the

> range of freedom of expression as assured by the Fourteenth Amendment, it cannot do so by means of a general and all inclusive breach of the peace prohibition. It must bring the activity sought to be proscribed within the ambit of a statute or clause 'narrowly drawn to define and punish specific conduct as constituting a clear and present danger to a substantial interest of the state.' Cantewell v. Connecticut, supra, 310 U. S. at 311; Thornhill v. Alabama, 310 U. S. 88, 105. And of course the interest must be a legitimate one. A state may not "suppress free communication of views, religious or other under the guise of conserving desirable conditions. Cantwell, supra, at 308."

The right of free speech as a fundamental right given a preferred position with relationship to the other freedoms guaranteed by the Constitution. This right may not ordinarily be denied or abridged. But although the right to free speech is fundamental, it is not in its nature absolute. Its exercise is subject to restriction, if the particular restriction proposed is required in order to protesest the state from serious injury, political, economic or moral. That the necessity which is essential to a valid restriction does not exist unless speech would produce, or is intended to produce, a clear and imminent danger some substantive evil which the state constitutionally may seek to prevent has been settled. See Schenck v. United States, 249 U.S. 47, 52.

The imputation to petitioners of intent to disturb the peace by refusing to move on does not qualify the City of New Orleans to abridge peaceful picketing or attempts to buy tickets. To justify the suppression of free speech there must be a reasonable ground to fear that serious evil will result if free speech is practiced. There must be reasonable ground to believe that the danger apprehended is imminent. There must be reasonable ground to believe that the evil to be prevented is a serious one.

No danger flowing from speech can be deemed clear and present, unless the incidence of the evil apprehended is so imminent danger cannot justify resort to prohibition of these functions essential to effective democracy unless the evil apprehended is relatively serious. Prohibition of free speech is a measure so stringent that it would be inappropriate as the means for averting a relatively trivial harm to society. The facts that the picketing is likely to result in some violence or in destruction of property is not enough to justify its suppression. There must be the probability of serious injury to the City of New Orleans.

We submit that the facts relative to these charges do not constitute facts which authorize the city of New Orleans, to abridge the right of the defendants to peacefully picketing against segregation.

V.

> "The right of personal liberty is one of the fundamental rights guaranteed to every citizen, and any unlawful interference with it may be resisted. Every person has a right to resist an unlawful arrest; and in preventing such illegal restraint of his liberty be may we such force or may be necessary." City of Monroe v. Ducas, 14 So 2d 781 (1943).

> "A presecution will not lie for resisting an officer where and officer is attempting to make an unlawful arrest." City of Monroe v. Ducas, Supra.

The petitioners herein are charged with resisting arrest. The facts clearly show that there was no justification for the arrest and the petitioners were justified in resisting an unlawful arrest.

VI.

Even if the ordinance is Constitutional on its face the defendants have been deprived of equal protection if the application of the ordinances.

The Court in Yick Wo v. Hopkins, 118 U.S. 356 (1886) Said at 373:

> "...Whatever may have been the intent of the ordinances as adopted, they are applied by the public authorities charged with their administration, and thus representing the State itself, with a mind so unequal and oppressive as to amount to a practical denial by the State of that equal protection of the laws which is secured to the petitioners, as to all other persons, by the broad and benign provisions of the Fourteenth Amendment of the Constitution of the United States. Though the law itself be fair on its face and impartial in appearance yet, if it is applied and administered by public authority with an evil eye and an unequal hand so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution. This principle of interpretation has been sanctioned by this Court in Henderson v. Mayor, etc., of New York, 92 U.S. 259 (Bk. 23, L. ed. 676); Neal v. Delaware, 103 U.S. 370 (Bk. L. Ed. 267), and Soon Hing v. Crowley, 113 U.S. 703."

The police officers demand that petitioners discontinue their picketing and attempts to buy tickets and the subsequent arrests based on this demand deprived petitioners of the equal protection of the Laws.

Counsel for defendants urge that the only action by the defendants was to peacefully picket and to seek to buy tickets in protest of racial discrimination. This was an exercise of their Constitutionally guaranteed rights under the First and Fourteenth Amendment of the United States Constitution and Section 3 and 5 of Article 1 of the Constitution of the State of Louisiana.

Respectfully Submitted;

COLLINS, DOUGLAS & ELIE
ATTORNEYS FOR PETITIONERS
2211 DRYADES STREET, 523-5197
NEW ORLEANS, LOUISIANA

FIRST MUNICIPAL COURT
PARISH OF ORLEANS
CITY OF NEW ORLEANS
STATE OF LOUISIANA

CITY OF NEW ORLEANS
VS.
DORATHA SMITH, et al,
77124-A

* *

MOTION TO QUASH

Now into this Honorable Court comes DORATHA SMITH, RUTHIE WELLS and SHIRLEY THOMPSON reserving their rights to file other pleadings herein, and having heard that they have been charged in an affidavit in the above entitled cause for the crime of Refusing to move on, and protesting that they are not guilty of the offense set out in the charge move to Quash the said affidavit in its entirety for the following reasons, to-wit:

I.

That the ordinance defining the offense with which your petitioners are charged herein should be quashed for lack of clarity in that the language of the ordinance lacks the clarity required by the Sixth Amendment of the Constitution of the United States as it fixes no ascertainable standard of guilt that the defendants or would be defendants would be aware or appraised of prior to commission of the act or acts and prior to a determination by the courts.

(1) That 828 MCS 42-90 consist of eight (8) sub sections and that your defendants do not know under which sub section they are charged in that the affidavit against them does not state the section but defendants are only given the following information, "Refusing to move on."

II.

The ordinance under which petitioners were charged violates the Due process and Equal Protection clauses of the Fourteenth Amendment of the Constitution of the United States in that it has for its purpose furthering and maintaining the City's policy of forced segregation in the city of New Orleans, or in the alternative, and the alternative only it is being administered in a fashion so as to deny members of the Negro Race and whites acting in concert with them of rights secured to them under the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States by exacting of them criminal penalties for seeking to exercise their freedom of speech and of assembly as guaranteed by the First and Fourteenth Amendments to the U. S. Constitution.

III.

That in the alternative and in the alternative only this ordinance makes it possible to exact a penalty from these particular defendants merely because of their attempt to demonstrate by picketing in keeping with their rights under the First and Fourteenth Amendment and the free speech and peaceful assembly Clauses of the First Amendment.

IV.

The Refusing to move on ordinance under which defendants are charged is unconstitutional in its application because it is being used to proscribe peaceful picketing. The First and Fourteenth Amendments have been interpreted to mean that peaceful picketing is a constitutionally protected right if it is done for a lawful purpose. Here the mere act of one person picketing peacefully against racial segregation is given the dynamic quality of a crime.

V.

That the enforcement of the ordinance under which defendants are charged under the circumstances prevailing at the time of arrest deprives the defendants of freedom of Speech and freedom of peaceful assembly, of the form of a peaceful protest of discriminatory practice in violation of the Fifteenth Amendment of the United States Constitution, as guaranteed by the First and Fourteenth Amendments of the United States Constitution and Sections 3 & 5 of the Constitution of the State of Louisiana.

WHEREFORE, petitioners prays that this motion to Quash be sustained and that the affidavit filed herein against them be Quashed and that the charges be dismissed and that they be restored to their liberty forthwith and that they be relieved from further prosecution herein under the ordinance complained, and for all orders necessary and for general and equitable relief.

COLLINS, DOUGLAS & ELIE
2211 Dryades Street, 523-5197
ATTORNEYS FOR PETITIONERS
NEW ORLEANS, LOUISIANA

BY:__________________________

STATE OF LOUISIANA
PARISH OF ORLEANS

BEFORE ME, the undersigned authority, personally came and appeared: ROBERT F. COLLINS, who after being first by me duly sworn said,

That he is one of the attorneys for the petitioners named in the above and foregoing petition; that he has read same and that all of the allegations of facts therein contained are true and correct to the best of his knowledge, information and belief.

____
ROBERT F. COLLINS

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 3RD DAY
OF MARCH, 1964.

____
NOTARY PUBLIC

MAR 18 1964

COLLINS, DOUGLAS & ELIE
ATTORNEYS & COUNSELLORS AT LAW
201 DOUGLASS LIFE INSURANCE BUILDING
2211 DRYADES STREET
NEW ORLEANS 13, LOUISIANA

. COLLINS
DOUGLAS
ELIE

TELEPHONE
523-5197

New Orleans
V:
Smith

March 16, 1964

Mr. Alvin Liska
City Attorney
City Hall
New Orleans, Louisiana

Re: City of New Orleans
vs.
Doratha Smith, et al
77124-A

Dear Sir:

Enclosed herewith you will find a copy of the Motion to Quash and the memorandum in support thereof filed in the above case.

Sincerely,

COLLINS, DOUGLAS & ELIE

BY: Robert F. Collins

RFC/amr

2 Enclosures

CC: Mr. Carl Rachlin
Attorney at Law
38 Park Row
New York 38, New York

CC: Mr. F. B. McKissick
213½ W. Main Street
Durham, North Carolina

SEDFRE

NEW YORK VS. AUERBACH, ROBERT, 1966
(DEMONSTRATION)

Society of Wisconsin

Box 39
Folder 28

Please Retain Original Order

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM: FIRST DEPARTMENT

PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-

ROBERT AUERBACH, et al,

Defendants-Appellants.

IT IS HEREBY STIPULATED, CONSENTED TO AND AGREED, between the undersigned attorneys for the parties captioned above, that on the basis of the attached affadavit of STEPHEN M. NAGLER:

1. An order be entered that the appeal in the above captioned case be joined and consolidated for all purposes with the appeal in the case of People v. Jack Dew~~e~~s (Index #41412).
2. An order be entered reinstating the appeal in the above captioned case and placing it on the calendar for the September Term 1966, and likewise reinstating People v. Jack Dews, et al (Index #41412).

Respectfully submitted,

Frank S. Hogan, Esq.
District Attorney of New
York County
155 Leonard Street
New York, New York

per Alan F.

Attorney for Respondent

Stephen M. Nagler

Stephen M. Nagler
c/o CORE
38 Park Row
New York, New York

ATTORNEY FOR DEFENDANTS-APPELLANTS

SUPREME COURT OF THE STATE OF NEW YORK
APPELLANT TERM: FIRST DEPARTMENT

PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-

ROBERT AUERBACH, et al,

Defendants-Appellants.

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS,:

STEPHEN M. NAGLER, ESQ., being duly sworn deposes and says:

1. I am an attorney for the Congress of Racial Equality and associate of Marvin Karpatkin and Carl Rachlin, and as such I am familiar with the facts in this case.
2. The above named defendants-appellants were represented by Marvin Karpatkin at their trial before the Honorable Irving Schreckinger, Judge of the Criminal Court of the City of New York, in the County of New York, on and about the 5th day of May, 1965. The Defendants were convicted of violating Section 722 of the Penal Law.
3. They were tried together with four other defendants whose names are Jack Dewes, Jean Forest, Jennifer Miller, and Ronald Riley who were also convicted on the same charge.

4. Although all of the Defendants were tried together, two separate Notices of Appeal were filed separating the group denominated in the caption from the group listed in paragraph three (3). My name appears as counsel to the former group.

5. The failure to prosecute this appeal in due time is explained by the fact that although minutes were ordered to be prepared at the expense of the State of New York on August 20th, 1965, in this case of Jack Dewes, et al, and appellants were ordered to perfect their appeal for the October Term 1965, the minutes were not, in fact, made available to counsel until approximately the latter part of April, 1966. The delay was through no fault of any attorney for appellants or of any of the appellants themselves. During the intervening period, there would have been no point in moving this court for an extension of time inwhich to prosecute the appeal since counsel had no idea of the date by which the minutes would be ready.

6. In addition, counsel wished to await a final determination in the case of People v. Penn which was made last month.

7. The questions of law and fact presented in the cases of those defendants named in the caption and those defendants named in paragraph three (3) are identical. In fact, their trials are all represented in the same set of minutes.

8. In both sets of cases the defendants-appellants entered a public building and proceeded in a peaceful and orderly manner to exercise their constitutional rights and based on this, it is my feeling that important questions of law and fact will be presented in these appeals.

9. Neither I nor any attorney who is or has represented any of the defendants-appellants in any stage of thes proceedings has solicited or received any fee what-so-ever for his services or expenses; nor will any fee be sought by any of said attorneys.

10. No previous application has been made to this or any other court for the relief sought.

WHEREFORE , your deponent prays that an order be granted setting aside the order dismissing the appeal herein pursuant to Rule III (II) (c), Rules of the Appellant Term, First Deparment and consolidating this appeal with that in People v. Jack Dewes, et al (Index II 41412) and for a further order granting an extension of time inwhich to perfect the appeal to the September Term, 1966.

Stephen M. Nagler

Stephen M. Nagler

Sworn to before me this

23 day of June 1966

Rita L. Carrington

RITA L. CARRINGTON
NOTARY PUBLIC, State of New York
No. 41-0581325
Qualified in Queens County
Cert. filed in New York County
Term Expires March 30, 1967

New York US Banks, Fredericks, Goldwag. 1963

Box 39
Folder 29

Society of Wisconsin

Please Retain Original Order

APPELLATE TERM OF THE SUPREME COURT
FIRST DEPARTMENT, STATE OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK
Respondent

- against -

GILBERT H. BANKS, MAURICE FREDERICKS, ARNOLD S. GOLDWAG
, Defendants-Appellants

To Frank S. Hogan, District Attorney of New York County:

Sir: Please take notice that defendants' appeal in the above-entitled matter will be brought on for argument before this court at the next term thereof, to be held at the courthouse in the city of New York, on the twnety-fifth day of August; at the opening of the court on that day, or as soon thereafter as counsel can be heard.

Dated : New York, New York, this twenty-third day of August ,1966.

Yours, etc.,

Defendants' Attorney

Proceedings below:

This action was brought by the People of the State of New York in the Criminal Court of the City of New York Part 2-b: County of New York, against Gilbert H. Banks, Maurice Fredericks and Arnold S. Goldman, for violation of S. 2036 of the Penal Law, alleged to have occured on February ~~xx~~ 22, 1963, when the defendants ignored an order to leave an apartment building located at 78 Manhatten Avenue, New York, New York, The defendants were convicted of the charge before a three-judge court, April 3, 1963, and sentenced to an indefinate period of probation, to ~~x~~ to exceed three years, on May 13, 1963, by Hon. Benjamin Gassman.

Golding

It has been stipulated that the decision in People v. Lawson, 16 N.Y. 2d 552, 260 N.Y.S. 2d 661, will govern this appeal.

STATEMENT OF FACTS

Golding

On February 22, 1963, defendants Maurice Fredericks, Gilbert H. Banks, and Arnold Goldman sat down on chairs in the lobby of a five story apartment building, located at 78 Manhatten Avenue, New York, N. Y. (24), and containing about 59 apartments (24). Defendants are Negroes (38). At about 8:00 pm., the superintendent of the building, William Banch, approached them and without asking if they were tenants in the building, or asking ~~ifxthey~~ them their purpose (27) told them to leave (20). When defendants did not respond, the superintendent called the real estate manager, Robert Nieman (21), and again told defendants to leave. The defendants remained sitting (22), and the superintendent called the police, who ~~xxxxix~~ arrived about fifteen minutes later (22). On of the officers ~~xxxxxxxxxx x~~ requested each defendent to leave, and when the defendants remained seated (23), they were carried out of the building by the policemen (23, 24, 35). They were then arrested (24).

QUESTIONS PRESENTED

Golding and Williams

In light of People v. Lawson, People v. Collins, and Bowie v. City of ________,

1. Can the defendants be lawfully convicted for violating Section 2036 of the Penal Law, prohibiting intrusions on real property, ~~x~~ because they remained, after being requested to leave, on premises theretofore lawfully entered?

2. Can the defendants be lawfully convicted for violating section 2036 of the Penal Law when the People have not shown beyond reasonable doubt that the defendants did not have permission or right to enter the premises in question?

3. Can the defendants be lawfully convicted for violation of section 2036 of the Penal Law when the People have not shown beyond reasonable doubt any intent on the part of the defendants to intrude on real property without lawful permission?

4. Can any of the defendants be convicted for violation of section 1857 of the Penal Law, for resisting arrest, when there was no cause to arrest them for violation of Section 2036 in the first place?

STATEMENT OF FACTS

Williams

On August 1, 1963, at about 6:15 P.M., the seven defendants entered a building at 22 West 55th Street owned privately by Governor Nelson A. Rockefeller and containing numerous offices regularly used for State business. At the time the defendants entered the building, some of the state offices were still open. They entered a foyer and ascended a flight of six steps at the top of which was a reception desk and a hallway leading to rooms in the building (see pp. 146-146 of record for August 23, 1963). Mr. William Leiby, serving as a guard and receptionist at the top of the steps told the gourp that one of their number would have to leave. No one left, and the group sat on the steps in protest.

Mr. Lesby instructed on of the seven defendants or one of the three people in the building's press Room to leave, persuant to an arrangement reached between Mr. Alexander Aldrich on behalf of Governor Rockefeller and a group of local community leaders, among whom was defendant Movies, on July 10, 1963. The agreement on July 10 permitted no more than nine persons to "sit-in" in the building's press room at any one time, and also permitted the demonstrators to use washroom and to freely enter and leave the building. The purpose of the "sit-in" was to protest State inaction in prohibiting racial influence and discrimination in the building industry.*

** When all the defendants resused to move as they were requested to do, they were placed under citizen's arrest by Mr. ~~Lesby~~ Lehey (see pp. 222-231 of the record of August 23), at approximately 8:00 P.M. They were not informed of what crime they were charged with. When 5 of the defendants refused to accompany the police to the patrol wagon, Detective messers arrested those five for "obstructing a police officer" (p. 229 of record for August 23). The five were carried to the patrol wagon.

* At the time in question there were three people in the Press Room and the seven defendants at the receptionist desk.

Leahy

** Mr. ~~Leahy~~ then told the defendants to move, that they were obstructing the passageway.

ARGUMENTS

Williams

The convictions of these defendants should be reversed by this court:

1. In accord with People v. Lawson, 44 Misc. 2d 578,254 N.Y.S. 2d 300 (1964); 16 N.Y. 2d 552,260 NYS 2d 661 (1965); People v. Collins, 44 Misc. 2d 430,254 NYS 2d 182 (1964); 16 NY 2d, 554,260 NYS 2d 662, (1965); and Bonie v. City of Columbia, 378 U.S. 347, 845.ct. 1967, 12h. ED. 2d 894 (1964); the defendants cannot be convicted for violation of Section 2036 of the Penal Law because they did not intrude on real property within the meaning of the terms of the Statute. At most they remained on premises lawfully entered, after being requested to leave. Their arrest was specifically a result of their refusal to leave the premises which they entered lawfully (see below), at their refusal to move. A refusal to leave or move from a lawfully entered premises is not a violation of Section 2036.

~~Quote~~, "While Section 2036 of the Penal Law makes it a misdemeanor to intrude unlawfully on the land of another, it does not make it unlawful to remain, after being requested to leave, on premises theretofore lawfully entered. (The decision) cannot stand without offending the fundamental requirements of due process' (Bowie v. City of Columbia, 378 U.S. 347, 84 S. Ct. 1697, 12h. Ed. 2d 894 (1964)."

People v. Collins, 254 NYS 2d 182, 183, 44 Misc. 2d 430 (1964).

This conviction cannot stand because it violates the basic principle that a criminal statute must give fair warning of the conduct it prescribes. The provisions of Section 2036, as written, did not and could not have appraised the defendants that this conduct in refusing to leave violated the statute.

Criminal trespass

------who "knowingly enters or remains unlawfully"

The "Proposed N.Y. Penal Law", See. 145.10. City this Judge Gold says,

#2 "It thus seems clear that the commission recognized that section 2036 does not presently make criminal the refusal to leave real property which had been entered lawfully."

301-

p. 302   4.

"The Supreme Court....emphasized the basic principle that a criminal statute must give fair warning of the conduct that it makes a crime, quoting from United States v. Harris, 347 U.S. 612, 617, 745. ct. 808, 98 L. Ed. 989, as follows (p. 351, 84 S. ct. p. 1701): "'The constitutional requirement of ~~definition~~ definiteness is violated by a criminal statute that fails to give a person of ordinary intelligence fair notice that that his contemplated cnnduct is forbiddent by the statute. The underlying principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be prescribed.'"

Defendants in the instant case were not fairly appraised by the provisions of Sectinn 2036, Supre, that that their refusal to leave Niehim's office was a violation of that Section. Indeed, the Section as written is wholly inapplicable to their refusal to leave. Since defendants have been convicted on the basis of conduct not provided by Section 2036, Suspon...
(judgment reversel.)

44 Misc. 2d 578 (1964). People v. Lawson

Quote   Insert #1

As Judge Gold Said at p. 302, "It (Penal Law 2036) does not purport to make criminal a refusal to leave property which had been lawfully entered." Indeed, Judge Gold referred to the "Proposed New York Penal Law," Section 145.10, which holds a person guilty of criminal trespass "who knowingly enters or remains unlawfully" on the property of another. He points out that"

INSERT # 2."

Therefore, this conviction must be overturned on the basis of precedent; the statute involved doesnnot make refusal to leave lawfully entered premises a criminal violation and it would violate due process if it purported to do so.

2. It seems clear that the defendants actually entered the premises in question lawfully (note that this is not what they were prosecuted for in fact at the trial below) The foyer at stairway were in a building containing state offices and were therefore implicitely open to the public. The defendants moreover had business in the building's Press Room. They therefore did not lack"permission" to enter (if "permission" to enter the foyer of a public building is a meaningful term at all). They had legal right to be there. This conviction cannot be sustained because the defendents in fact

did not violate Penal Law 2036. They entered the premices lawfull y. Note that the defendants were not in fact arrested for unlawful intrusion.

3. Not only has th3 state not shown that the defendants in fact entered the premises unlawfully or without permission, but even if we assume that the defendants had not right to enter the foyer of a public building, the state has not made out the required criminal intent. See People v. Winig of Misc. 2d 803, 163 N.Y.S. 2d 995 (1957) where there was no evidence of criminal intent and the court reversed the defendtnt's conviction for criminal trespass. Indeed, the state introduced no evidence to indicate anything but that the defendants entered the building believing they had lawful business in the building's Press Room. This conviction myst therefore be reversed because the state has not proved beyond reasonable doubt that the defendants criminally intended to violate the statute prohibiting the intrusion on real property.

4. Since the conviction for violation of section 2036 must fill, the convictions for violation of Sectio n 1851 must LIKEWISE fail. In an analogous situation involving section 1825 of the Penal Law, "Risisting an Officer," People v. Stevens 16 Wice 2d 2d 162, 103 NYS 2d 968 (1959), held that a conviction of resisting arrest for violation of an unconstitutional law must be set aside. See also (directly involving Section 1851) People v. Hill 131 Misc. 521,227 NYS 285 (1928), which likewise seems in point.

For the same reason, defendant Morris' sentence for parole violation must be set aside.

5. The conviction of defendants Fredericks and Banks should be reversed on the basis of People v. Goldman,.

The same facts were present in that case as in the present one. The conviction was reversed by the Supreme Court, appellate term, in an order of March 10, 1966, Jan. No. 558 (1964). The basis for the reversal was stated to be the precedence of People v. Lawson, 16 N.Y. 2d 552, 266 NYS 2d 661.

POinT I.

THE APPELLANTS DID NOT ENEER THE PREMISES UNLAWFULLY AND THEREFORE CANNOT BE GUILTY OF A VIOLATION O6 S.2036

The case at hand is virtually identical to People v. Lawson, 44 Misc.2d 578, 254 N,Y.S.2d 300 (Supteme Court,Appellate Term,Ist Dept.),aff'd 16 N.Y. 2d 852,260 N.Y.S.2d 661 (May,1965). In that case the Court stated:

> Section 2036 in clear and unambiguous langusage makes criminal only unauthorized entry upon real property.It does not purport to make criminal a refusel to leave property which has been lawfully entered.

In Lawson ~~There~~ six defendants had entered a renting office and refused to leave the premises upon the owner's request. Their arrest and subsequent conviction for violation of Section 2036 was reversed by the Appellate Term(ist Department). The Court noted that ~~*there*was~~ criminal intent must accompany an intrusion to constitute a violation of Section 2036, and since the defendants had enetered the renting office at the implied invitation of its owner, there could have been no criminal intent.

The case at hand is precisely the same as that in Lawson. Here too, the defendants entered an area open to the public at the implied invitation of its owner; here too, they did not respond to a request to leave the premises; here too they were arrested and charged with a violation of Section 2036; here too they were convicted of that violation ~~those charges~~; and here too that conviction should be reversed.

The lobby of 78 Manhattan Avenue, like the renting office in the Lawson case, was open to the public; it was utilized by deliverymen, guests, solicitors,servicemen and many others at the implied invitation of the owners.Thus, when the defendants entered the lobby, they did ~~not do~~ so ~~un~~lawfully. In fact, ~~This is emphasized by they statement of~~ (p 24)
Officer Mikayelian told ~~that if~~ that if they the defendants left the lobby, ~~no charges would be preferred~~ the whole thing would be forgotten. ~~Therefore~~ This indicates that ~~against them.~~ ~~The entry itself was not considered unlawful~~; ~~the objection~~ fault was found

The scope of
with defendants' refusal to leave, not with their initial entry./ Section 2036 includes

only unlawful intrusion, however; it ~~does not~~ is 'wholly inapplicable to ...refusal to
Since there was no violation of section 2036,
leave."Lawson at 230./The conviction of appellants ~~under section 2036~~ should ~~therefore~~

be reversed.

S.S. 503-5M-701219(59) 114

NEW YORK

Court of Special Sessions of The City of New York.

County of New York.

THE PEOPLE OF THE STATE OF NEW YORK

against

[illegible] H. BANKS, MAURICE FREDERICKS

ARNOLD S. GOLDWAG,

Defendants

Be it Remembered that I, FRANK S. HOGAN, the District Attorney of the County of New York, by this information, accuse the above-named defendants of the CRIME OF INTRUSION ON REAL PROPERTY,

committed as follows:

The said defendants, on February 22, 1963, in the County of New York, unlawfully did intrude upon a certain lot and piece of land, and a building thereon, without authority from the owner thereof.

SECOND COUNT

AND I, THE DISTRICT ATTORNEY AFORESAID, by this information, further accuse the said defendants of the offense of DISORDERLY CONDUCT, committed as follows:

The said defendants, on February 22, 1963, in the County of New York, with intent to provoke a breach of the peace, and whereby a breach of the peace might be occasioned, unlawfully did act in such a manner as to annoy, disturb, interfere with, obstruct and be offensive to others.

FRANK S. HOGAN,

District Attorney.

HAROLD M. LUSTIG
COURT REPORTER

Adj to 2/3/64 P.

OCT 18 1963 M.S.E.

MAURICE E. DOWNING

~~[illegible]~~

~~[illegible]~~ M.S.

FEB 3 1964

DAVID SEIDMAN
COURT REPORTER

4/3/64 M.B.

1st Reserved M.S.

FEB 1964

MAURICE W. GREY

Before 3 man Bench - which originally sentenced defendant to hear Motion to set aside Suspension of Sentence and Impose Sentence. M.S.

DAVID SEIDMAN
COURT REPORTER

MAURICE W. GREY

4/7

Com

WILLIAM SAUS
78 Manhattan

OFF. DUENO 24 Pr.

10/18 IC

~~9/17~~ 9/17

~~8/4/63~~ 10/18

COURT OF SPECIAL SESSIONS OF
THE CITY OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE

vs.

Fingerprints Attached

1. GILBERT H. BANKS PAR.
2. MAURICE FREDERICKS PAR.
3. ARNOLD S. GOLDWAG PAR.

#3 only

1727 C.B. Refund Cash Bail 4/29/64

INFORMATION:
INTR. ON REAL PROP., etc.

73

H1

FRANK S. HOGAN,
District Attorney

Filed, MAR 12 1963

Counsel, LC.

ADJOURNMENTS:

3/28

#3 5/30/63 Probation Review Part IC

MAR 12 1963 PART 2—CAL NO.
GASSMAN

Case advanced from 3/28/63 Pt-3-

Each

On trial 3/20/63
PA2B

J. K. O'Brien

Presiding Justice

30

MAR 20 1963 PART 2—CAL NO.
K. O'BRIEN GASSMAN KENNETH M. PHIPPS

Adjourned to 4/3/63
Defts

Presiding Justice

APR 3 1963 PART 2—CAL NO.
IMPELLITTERI NEAL P. BOTTIGLIERI VINCENT

Each defendant each count

ON TRIAL DEFENDANT CONVICTED
5/13/63 FOR
INVESTIGATION AND SENTENCE

LC

J. A. R. Impellitteri

MAY 13 1963 PART 2—CAL NO. 5
GASSMAN IMPELLITTERI

Each defendant
1 year N.Y.C. Penitentiary

SENTENCE SUSPENDED
DEFENDANT PLACED ON PROBATION

On Ct. # 1
as to Ct. # 2

Gassman

25

Defendant
1694b of the Penal Law

FEB 22 1963

Date

VINCENT P. RAO
Judge.

CAROL M. WRIGHT
COURT REPORTER

Adjourned to 3/11/63 Bail $

PC wed day -

If paroled, the defendant was advised pursuant to section 1694b of the Penal Law.

FEB 26 1963

Date

LUDWIG GLOWA
Judge.

Adjourned to 3/28/63 Bail $ PC

PT 3 [illegible]

HARVEY KEITEL
COURT REPORTER

If paroled, the defendant was advised pursuant to section 1694b of the Penal Law.

MAR 11 1963

Date

VINCENT P. RAO
Judge.

84
2-

SENTENCE

Judge.

Court Docket

Cit'f Plat

B 1726

CRIMINAL COURT
OF THE CITY OF NEW YORK

B 1727

11 .... County of ....

THE PEOPLE OF THE STATE OF NEW YORK

1. Gilbert H Banks M 36
939 Smith St Uniondale NY

2. Maurice Fredericks M 38
317 Midwood St Bklyn

[illegible]

3. Arnold S Goldwag M 25
769 St Marks Ave Bklyn

Address

1963

Defendant arraigned February 22 19 63

Hon. Vincent P Rao Judge.

Dueno
24 Pct Officer and Shield No.

Assignment.

The defendant on being brought before me was informed of the within charge of violation of

Vio Sect 2036 PL

NOTE:
Dft #3
ARNOLD S GOLDWAG -

of his right to communicate with relatives or friends by letter or telephone free of charge, of his right to the aid of counsel at every stage of the proceedings and before any further proceedings, of his right to an examination of the charge, of his right to an adjournment to procure counsel or to communicate with anyone and of his right to a trial in a part of the Court held by a panel of three judges.

2/16/66

Judge.

Defendant pleads GUILTY

Conviction Reversed

Date 19

& Complaint Dismissed

Judge.

Tried and found GUILTY

By App. Term

Date

See order within

Judge.

Witnesses—name and address

As to Banks

Probation Terminated

JACOB KLEIN
COURT REPORTER

JAMES J. COMERFORD

FREDERICKS

RICHARD GROSS
COURT REPORTER

Probation Terminated Favorably

MAR 18 1965
REUBEN LEVY

CASH BAIL POSTED. Treas. Cert. #

ORDER THAT THE WITHIN CASH BAIL BE REFUNDED

Date Judge.

Refund Number Court Clerk.

Complaint prepared by

Exam. Waived , 19

Exam. Begun , 19

Exam. Closed , 19

ORDER

There being no sufficient cause to believe the within-named

guilty of the offense within mentioned, I order said defendant to be discharged.

Dated, , 19

Judge.

It appearing to me by the within depositions and statements that the crime therein mentioned has been committed, and that there is sufficient cause to believe the within named defendant

10/21/66

County of N.Y.

I hereby certify that the within is a true Copy of the Record on file at this Court.

guilty thereof, I order that said defendant ~~be held~~ to answer and be admitted ~~to bail in the sum of~~

$

Court Clerk

per

and be committed to the Commissioner of Correction of the City of New York until he give such bail.

Dated.

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM, FIRST DEPARTMENT

-- X

PEOPLE OF THE STATE OF NEW YORK :

Calendar # B-1725
B-1726
B-1727

Respondent, :

- against - :

GILBERT H. BANKS, MAURICE FREDERICKS, :
and ARNOLD S. GOLDWAG

Defendants-Appellants :

:

-- X

APPELLANTS' BRIEF

Carl Rachlin
Stephen M. Nagler
Attorneys for Appellants
38 Park Row
New York, New York 10038

XERO COPY XERO COPY XERO COPY XERO COPY

TABLE OF CONTENTS

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POINT I The Appellants Did Not Enter the Premises Unlawfully and Therefpre Cannot Be Guilty of a Violation of Section 2036 of the Penal Law

Conclusion -- 5

XERO COPY XERO COPY XERO COPY

STATUTE INVOLVED

N.Y. Penal Law, Section 2036 Unlawful Intrusion on Real Property

" A person who intrudes upon any lot or piece of land within the bounds of a city or village, without authority from the owner thereof, or who erects or occupies thereon any hut, or other structure whatever, without such authority; and a person who places or erects or occupies within the bounds of any street or avenue of a city or village, any hut, or other structure, without lawful authority, is guilty of a misdemeanor."

XERO COPY XERO COPY XERO COPY

STATEMENT OF FACTS

On February 22, 1963, all three appellants entered the public lobby of an apartment house situated at 78 Manhatten Avenue, in the County of New York, and sat down on three chairs located on the right side of the lobby. At approximately eight (8) o'clock in the evening William Bauch, the superindentent of the building, approached the appellants and asked them to leave. Without receiving a response, Mr. Bauch turned and left to place a call to his employer, Robert Nieman, the owner of the premises. After completing the call, Mr. Bauch returned to the lobby and repeated his request that the appellants leave. Again there was no response. Mr. Bauch then called the 24th Precinct and at approximately eight thirty (8:30) o'clock the police arrived. Patrolman Arthur Mikayelian approached the appellants and told them they had the choice of leaving the premises or of being arrested if they remained. A few minutes later the officer asked each appellant for his decision. All three said that they would remain seated. After four or five additional officers had been summoned, the appellants were arrested and carried off the premises.

The appellants were charged with a violation of Section 2036 of the Penal Law and each pleaded not guilty. Trial was on April 3, 1963, and each was found guilty as charged. On May 13, 1963, each received a suspended sentence with a probation period not to exceed three years.

POINT I

THE APPELLANTS DID NOT ENTER THE PREMISES UNLAWFULLY AND THEREFORE CANNOT BE GUILTY OF A VIOLATION OF SECTION 2036.

The case at hand is virtually identical to People v. Lawson, 44 Misc. 2d 578, 254 N.Y.S.2d 300 (Supreme Court, APp. Term, 1st Dept.), aff'd. 16 N.Y.2d 252, 260 N.Y.S.2d 661 (May, 1965). In that case the Court stated:

> Section 2036 in clear and unambiguous language makes criminal only unauthorized entry upon real property. It does not purport to make criminal a refusal to leave property which has been lawfully entered.

In Lawson six defendants entered a renting office and refused to leave the premises upon the owner's request. Their arrest and subsequent conviction for violation of Section 2036 was reversed by the Appellate Term (1st Dept.). The Court noted that criminal intent must accompany an intrusion to constitute a violation of Section 2036, and since the defendants had entered the renting office at the implied invitation of its owner, there could have been no criminal intent.

The case at hand is precisely the same as that in Lawson. Here too, the defendants entered an area open to the public at the implied invitation of its owner; here too, they did not respond to a request to leave the premises; here too, they were arrested and charged with a violation of Section 2036; here too, they were convicted of that violation; and here too, that conviction should be reversed.

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The lobby of 78 Manhatten Avenue, like the renting office in the Lawson case, was open to the public; it was utilized by deliverymen, guests, solicitors, servicemen and many others at the implied invitation of the owner. Thus, when the appellants entered the lobby, they did so lawfully. In fact, Officer Mikayelian told the appellants that if they left the lobby, the whole thing would be forgotten (p. 24). This indicates that fault was found with appellants' refusal to leave, not with their initial entry. The scope of Section 2036 includes only unlawful intrusion, however; it is "wholly inapplicable to...refusal to leave." Lawson at 230. Since there was no violation of Section 2036, the conviction of appellants should be reversed.

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CONCLUSION

For the various reasons stated above, the convictions of the appellants should be reversed and the charges against them dismissed.

Respectfully submitted,

Carl Rachlin
Stephen M. Nagler
Attorneys for Appellants
38 Park Row
New York, New York

August 23, 1966

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APPELLATE TERM OF THE SUPREME COURT
FIRST DEPARTMENT, STATE OF NEW YORK

---------------------------------------X

PEOPLE OF THE STATE OF NEW YORK,
Respondent,

-against-

GILBERT H. BANKS, MAURICE FREDERICKS,
ARNOLD S. GOLDWAG,
Defendants-Appellants

---------------------------------------X

SIR:

Please take notice that the defendants' appeal in the above-entitled matter will be brought on for argument before this Court at the next term thereof, to be held at the courthouse in the City of New York, on the sixth day of November, at the opening of the Court on that day, or as soon thereafter as counsel can be heard.

Dated: New York, New York
October 25, 1966

Yours, etc.,

STEPHEN M. NAGLER
Attorney for Defendats-
Appellants
Office & P.O. Address
150 Nassau Street
New York, New York 10038

To: Frank S. Hogan
District Attorney of
New York County, New York

Clerk,
Appellate Term, First Department

APPELLATE TERM OF THE SUPREME COURT
FIRST DEPARTMENT, STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK

- against -

GILBERT H. BANKS, MAURICE FREDERICKS, ARNOLD S. GOLDWAG

SIR:

PLEASE TAKE NOTICE that the undersigned hereby appears for the defendants in the above-entitled action, in substitution for Sutton & Sutton, who appeared for defendants in the court below, and directs copies of all papers on said appeal be served on him instead of the defendants.

Yours, etc.,

Stephen M. Nagler
Attorney for Defendants-Appellants
38 Park Row
New York, New York

To: Frank S. Hogan
District Attorney
for New York County

CRIMINAL COURT OF THE CITY OF NEW YORK -
PART 2-B : NEW YORK COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK
On Complaint of:

OFFICER ARTHUR MIKAYELIAN,

-versus-

GILBERT H. BANKS,
MAURICE FREDERICKS,
ARNOLD S. GOLDWAG,

Defendants.

DOCKET NOS. B-1725,
B-1726,
B-1727.

CHARGE: Intrusion on
Real Property.

Trial held at:
100 Centre Street,
New York 13, N. Y.,
April 3, 1963.

Before:

HON. VINCENT R. IMPELLITTERI,
HON. NEAL P. BOTTIGLIERI,
HON. VINCENT P. RAO,

Judges.

- - - - - - - - - - - -

Bridgeman: Salvatore Bonfiglio.

DAVID D. GEDDES, C.S.R.,
Official Court Reporter.

APPELLATE TERM OF THE SUPREME COURT
FIRST DEPARTMENT, STATE OF NEW YORK

-- X

PEOPLE OF THE STATE OF NEW YORK :
Respondent
:
- against -
:
GILBERT H. BANKS, MAURICE FREDERICKS, ARNOLD S. GOLDWAG
Defendants-Appellants :

-- X

To Frank S. Hogan, District Attorney of New York County:

Sir: Please take notice that defendants' appeal in the above-entitled matter will be brought on for argument before this court at the next term thereof, to be held at the courthouse in the city of New York, on the twnety-fifth day of August; at the opening of the court on that day, or as soon thereafter as counsel can be heard.

Dated : New York, New York, this twenty-third day of August ,1966.

Yours, etc.,

Defendants' Attorney

APPELLATE TERM OF THE SUPREME COURT
FIRST DEPARTMENT, STATE OF NEW YORK

-- X

PEOPLE OF THE STATE OF NEW YORK :
Respondent
:
- against -
:
GILBERT H. BANKS, MAURICE FREDERICKS, ARNOLD S. GOLDWAG
Defendants-Appellants :

-- X

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Dated : New York, New York, this twenty-third day of August ,1966.

Yours, etc.,

____
Defendants' Attorney

APPELLATE TERM OF THE SUPREME COURT
FIRST DEPARTMENT, STATE OF NEW YORK

---X

PEOPLE OF THE STATE OF NEW YORK,
Respondent,

-against-

GILBERT H. BANKS, MAURICE FREDERICKS,
ARNOLD S. GOLDWAG,
Defendants-Appellants

---X

SIR:

Please take notice that the defendants' appeal in the above-entitled matter will be brought on for argument before this Court at the next term thereof, to be held at the courthouse in the City of New York, on the sixth day of November, at the opening of the Court on that day, or as soon thereafter as counsel can be heard.

Dated: New York, New York

Yours, etc.,

STEPHEN M. NAGLER
Attorney for Defendats-
Appellants
Office & P.O. Address
150 Nassau Street
New York, New York 10038

To: Frank S. Hogan
District Attorney of
New York County, New York

Clerk,
Appellate Term, First Department

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM: FIRST JUDICIAL DEPARTMENT

---X

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,

-against-

MAURICE FREDERICKS, GILBERT H. BANKS, and
ARNOLD GOLDWAG,
Defendants-Appellants

---X

STATEMENT PURSUANT TO RULE II (2)(c)
OF THE RULES OF THE APPELLATE TERM
FOR THE FIRST JUDICIAL DEPARTMENT

The defendants were given a suspended sentence; no fine was required, nor are the defendants presently out on bail. The docket numbers are: 1726/63, 1725/63, 1727/63.

filed Mar 10, 1966
hearing "

Goldway
Prior sentence (May 13, 1965) rescinded
probation terminated unfavorably
- one year in penitentiary

docket: Jan no. 558 (1964)

~~order~~:
appeal: - conviction reversed on law; complaint
dismissed

(2) – 2 copies (7.)

Stmt Pursuant to R 5531 of CPLR

1. The Docket Numbers in the Ct below are B-1725, B-1726, B-1726

2. The names of the parties are The People of the St of NY vs. Gilbert H Banks, Maurice Fredericks, Arnold S. Goldwag

3. The defendants were arrested on the 22nd day of Feb, 1963, in the County of NY

4. The action was commenced in Part 1C of the Crim Ct of the City of NY on the 3 day of Apr, 1963.

3, The defendants are charged w a Violation of Section 2036 of the Penal Law.

6. This appeal is taken from the judgmt of Conviction on the 3rd day of April, 1963 by the Hon. Vincent R Impellitteri, Hon. Vincent P. Rao, Hon Neal P Bottiglieri (?), and the sentence of ______

7. The appendix method is not being used.

④ 2 copies (?)

Supreme Ct of St of NY
App Term: First Judicial Dept

The People of the St of NY,
Respondent,
- against -
Gilbert H Banks, ~~Maurice Fredericks~~,
Maurice Fredericks,
Arnold S Goldwag,
Defendants-Appellants

Statement Pursuant to Rule 11 (2) (c)
of the Rules of the App Term
for the First Jud Dept

? ~~One~~ The defs were admitted to bail in the sum of ______ Dollars pursuant to a Certif

5 (see p 3 Calendar)

Crim Ct

- Please take notice

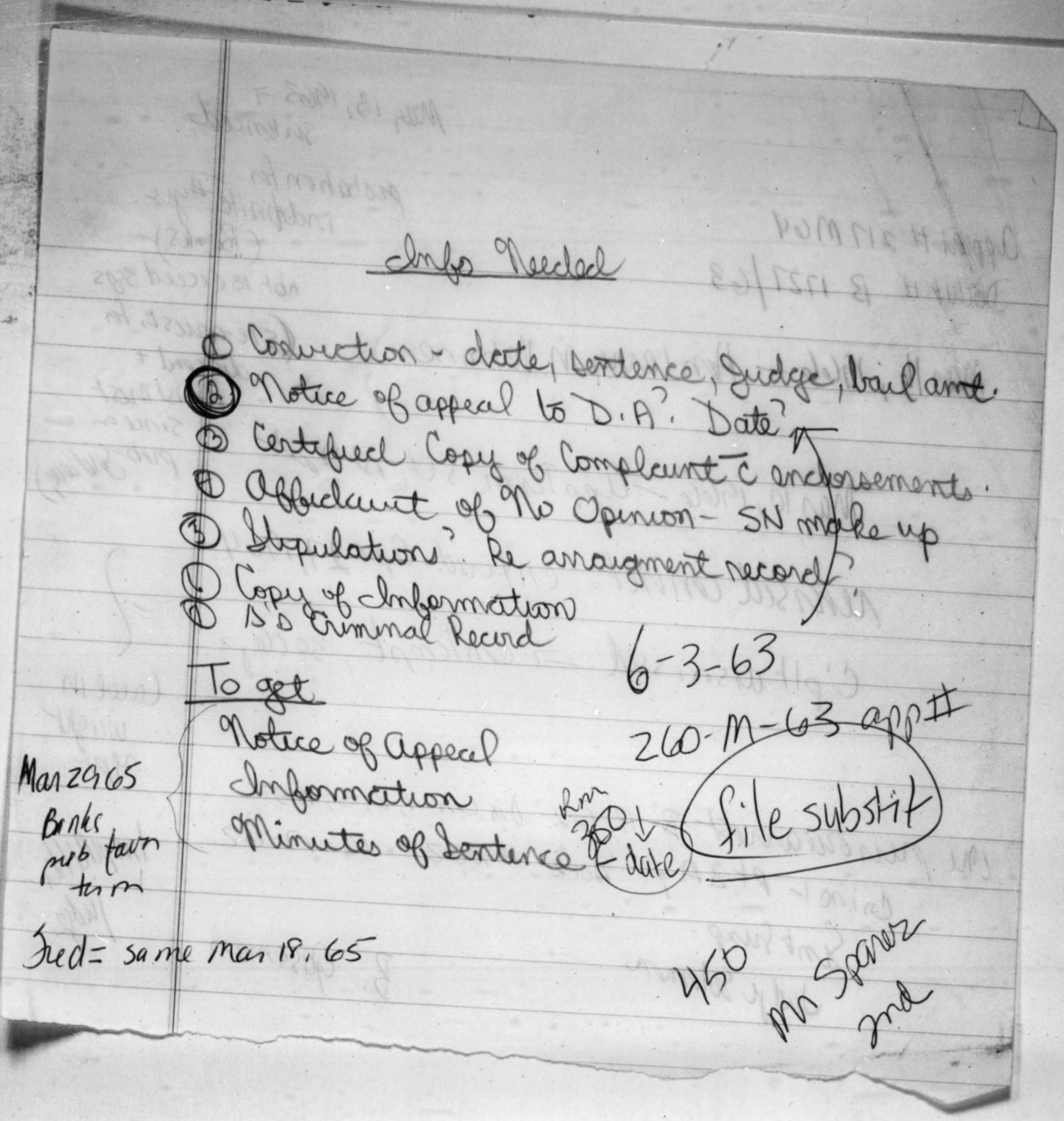
①

S. Ct App Term 1st dept
St of New York

The People of the St of NY
Respondent,
- against -
Gilbert H Banks,
Maurice Fredericks,
Arnold S Goldwag,
Defendants - Appellants

Record on appeal
From the Crim Ct of the City of New York, Part 2 B,
County of NY, of the S Ct of the St of NY

Stephen M Nagler, Esq
Carl Rachlin, Esq
150 Nassau St
New York, NY 10038



Info Needed

① Conviction - date, sentence, Judge, bail amt.
② Notice of appeal to D.A? Date?
③ Certified Copy of Complaint c̄ endorsements.
④ Affidavit of No Opinion - SN make up
③ Stipulation? Re arraignment record?
① Copy of Information
④ D's Criminal Record

6-3-63

To get

Notice of Appeal
Information
Minutes of Sentence

260-M-63 app#

Rm 380 ↓ date

file substit

Mar 29 65
Banks
pub farm
term

Fred = same Mar 18, 65

450

Mr Spanez
2nd

Appeal # 217 M64
Docket # B 1727/63

Mar 16, 1966 — Hon Larry M Vetrane

Mar 10, 1966 — App Term, S Ct, 1st Dept —

reversed convict. entered Apr 27, 1964 —

C'plt dismissed ⇒ contempt, 30 days

On previous arrest 8-11-62 Dis Con. 1, 2, 3, 4, 5
Crim Ct Pt 2A, Dock #4062 10-17-62
Sent Susp.
Judge Solomon

B. Gassman

May 13, 1963 →
sentenced
probation for
indefinite # yrs.
(Banks)
not to exceed 3 yrs
(5 re-arrests for
dis cond +
resist arrest
since on
prob - Goldwag)

Carol M
Wright
rpt.

Impellitteri =
Judge

minutes
stip. etc

People v Adkins,
Brown +
Pindell -
trial brief

sample record - App Term
all in calendar up to
add papers filed
for Ct App

People v Lawson (2036) - crim ct. app Term rev'sd -
affm Ct App no
opinion (w dissent)

impl open to public

People v
Stevens

38 Misc 2d 611, 238 NYS2d 839
44 Misc 2d 578, 254 NYS2d 300 (S.Ct, A.T., 1st Dept, 10/22/64)
16 NY2d 552, 260 NYS2d 661 (May 65)

Stmt facts
stmt case
point 1
conclusion

109 NY 159,
16 NE 53 (1888)

People v Goodroff, 45 Misc 2d
390, 257 NYS2d
77 (Mar 65)

State of New York vs Callendar, Herbert 1963 - 1967

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②

FILE COPY
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In the

Supreme Court of the United States

October Term, 1966

No. ....

William Turner, Albert Maher, Levi Laub, Richard Rhoads, Theodore Ostrow, Joyce Chadwick, Ellen Shallit, Arthur Kunis, Bruno Eckhardt, Vincent Copeland, Jeremiah Gelles, Ann Kyllingstad, Pierre Meisner, Fred Jerome, Jeremiah Teahan, Key Martin, Robert Apter,

Petitioners,

—against—

The People of the State of New York,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

Nanette Dembitz
Attorney for Petitioners
c/o New York Civil Liberties Union
156 Fifth Avenue
New York, N. Y. 10010
Telephone: WAtkins 9-6076

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In the

Supreme Court of the United States

October Term, 1966

No. ....

William Turner, Albert Maher, Levi Laub, Richard Rhoads, Theodore Ostrow, Joyce Chadwick, Ellen Shallit, Arthur Kunis, Bruno Eckhardt, Vincent Copeland, Jeremiah Gelles, Ann Kyllingstad, Pierre Meisner, Fred Jerome, Jeremiah Teahan, Key Martin, Robert Apter,

Petitioners,

—against—

The People of the State of New York,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

Petitioner prays that a writ of certiorari issue to review the judgment of the Court of Appeals of the State of New York, entered in the above-entitled case on June 2, 1966.

Citations to Opinions

The judgment of the New York Court of Appeals, affirming without opinion the convictions of the seventeen petitioners, is unreported and is reproduced *infra*, p. A-1. The opinion of the Appellate Term, Supreme Court of the State of New York, First Department, together with the concurring and dissenting opinions therein, are reported at 48 Misc. 2d 611, 265 N. Y. Supp. 2d 841 (reproduced *infra*

A-5, 32, 33). No opinion was issued by the trial court, the Criminal Court of the City of New York.

Jurisdiction

The judgment of the New York Court of Appeals was entered on June 2, 1966. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1257(3).

Questions Presented for Review

1. Whether the petitioners were convicted without the due process of law guaranteed by the Fourteenth Amendment, because they were convicted without notice of the charges against them.

2. Whether petitioners' convictions for holding a street meeting to peacefully express political dissent, violate the guarantees of freedom of speech and assembly embodied in the due process guarantee of the Fourteenth Amendment.

3. Whether subdivisions 2, 3, and 4 of Section 722 of the Penal Law of New York State, under which petitioners were convicted, are so vague and uncertain as applied to street meetings, that they violate the due process guarantee of the Fourteenth Amendment.

Statute Involved

Section 722 of the Penal Law of the State of New York (Laws of 1923, c. 642, Sec. 1, as amended; McKinney's Consolidated Laws of New York, Book 39, Part 1) provides:

"Disorderly Conduct.

"Any person who with intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned, commits any of the following acts shall be deemed to have committed the offense of disorderly conduct: * * *

"2. Acts in such a manner as to annoy, disturb, interfere with, obstruct, or be offensive to others;

"3. Congregates with others on a public street and refuses to move on when ordered by the police;

"4. By his actions causes a crowd to collect, except when lawfully addressing such a crowd; * * *".

Statement of the Case

The Complaint

The complaint against petitioners in the Criminal Court of the City of New York charged that "at 4.25 p.m. on August 8, 1964, vicinity Duffy Square—47 St. and B'way . . . the defendants did unlawfully congregate and assemble at the above location obstructing the area to the exclusion of those wishing to use same, and did delay vehicular traffic while carrying placards and using loud and boisterous language; by their actions did cause a crowd to collect; when ordered to move on the defendants did fail to do so after being informed that their actions were not lawful"; and that defendants thereby violated section 722, subdivisions 2, 3 and 4 of the Penal Law of the State of New York (R. 6).

Summary of Facts

According to the undisputed evidence, the street meeting leading to petitioners' convictions was held to protest the American policy in the Vietnam war, under the auspices of a group called the "May 2nd Movement", which had been formed a few months previously at Yale University (A-5, *infra;* T. 240-241, 321).[1] Duffy Square, where the meeting was held on a Saturday afternoon at about 4 o'clock, is a triangular area in midtown Manhattan, extending the length of one block, from 46th to 47th Streets. Towards both the 46th and 47th Street ends are statues, hedges, and railings; the large paved center section is unused and unbroken save for a subway grating (T. 263-264). Pedestrian traffic to and from the Square is permitted only at crosswalks at the 46th and 47th Street extremities, well-separated from the open center section by the statuary and fixtures.[2]

The speakers at the meeting stood on the steps leading to a statue of Father Duffy towards the northern end of the Square, with the audience in the center section (T. 282-284). Petitioners offered to prove that meetings for various causes such as bond rallies have been held in that section (T. 261-265).

One of the petitioners, acting as chairman, began the meeting, stating that "under the auspices of the May 2nd Movement we are here to have a peaceful meeting" (T. 59, 61, 66). After only a few minutes of speeches about the war in Vietnam, a police captain approached the speakers and ordered them to disperse the assembly. The chairman declared that the meeting should be allowed to proceed; the captain withdrew while the speeches continued; he returned after a few moments; he repeated his order and the chairman repeated his reply (T. 67-71). The police captain apparently had arranged for the physical dispersion of the meeting: suddenly, two policemen on horseback rode into the center of the Square where the audience was standing, to force its dispersion, accompanied by approximately a dozen foot patrolmen (T. 78-80, 85). As a chief prosecution witness testified: "Then the horses came on behind the foot patrolmen . . . That's when everybody started shouting and yelling and running" (T. 71-72). The petitioners tried to avoid the horses and to continue the meeting for some minutes until the police stated they were under arrest (as to their conduct during the police effort to force their dispersion, see *infra* pp. 8-9).

---

[1] "T." refers to the transcript of the trial, filed as part of the record in this Court.

[2] A photograph of Duffy Square was introduced in evidence as People's Exhibit 1 (T. 20-21); a similar photograph is filed in this Court with the record, by stipulation of counsel.

There was evidence that the police had pre-determined to break up the meeting (on the basis of a police policy later abandoned, and never acknowledged in court, to prohibit meetings for political dissent throughout a large area, regardless of traffic conditions).[3] Nevertheless, the prosecution attempted to prove, in an effort to justify the dispersal order, that the meeting was interfering with pedestrian and vehicular traffic.

---

[3] See T. 379, 274-275; and 302-303, 287-290 as to the police captain's failure to refer to traffic in his order to disperse. The policeman who recorded the meeting on a concealed miniphone, omitted the captain's remarks in the recording he played in Court (T. 68), and the prosecution failed to call the police captain as a witness; there was hearsay testimony only, admitted over objection, that he referred to traffic conditions in his order (T. 22-23). The trial court foreclosed proof as to the stated reason for the dispersal of the meeting (T. 89-90; see dissent, *infra* A-34).

The only entirely disinterested witness to the meeting was a reporter from the *New York Times*, who was unacquainted with petitioners and present solely in a reportorial capacity, called by the defense (T. 279-281). Although other newsmen also attended the meeting (T. 282), the prosecution called only the participating policemen, its chief witnesses being two officers attached to the Police Department's Bureau of Special Services, who had had the speakers and previous meetings under surveillance (T. 18-19, 29).

The *New York Times* reporter testified that the meeting was peaceful, orderly, small relative to the size of the center area of the Square where it was held, and not "attracting very much attention at all" until the advent of the horses (T. 305, 282-286). Since the center section of the Square concededly was large enough to accommodate many more than the audience at its maximum estimate,[1] the prosecution contention was that the audience pressed forward towards the Father Duffy statue to hear the speakers; that consequently a few of the auditors stood in the gutter and the audience filled the Square from curb to curb, at a point near the speakers; that pedestrians walking north to south or vice versa therefore had to walk in the gutter at this point; and because of the people in the street that the automobiles had to "veer" from one lane to another in the adjacent broad avenues (each having a number of traffic lanes) (T. 27-28, 213-214).

---

[1] Estimates of the number in the audience varied from 60 by the New York Times reporter, to 200 by the chief prosecution witness (T. 285, 26-27).

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Even if the truth of this testimony is assumed—despite its overall contradiction by the *Times* reporter and numerous indications that it was contrived to fit the claim that the dispersal order was based on traffic conditions rather than pre-determined—the police captain admittedly gave no suggestion or order that the audience narrow itself in the Square as an alternative to dispersal. Further, the maximum inconvenience possible for pedestrians from the alleged curb-to-curb audience, was that they would have been forced to use the cross-walk at one end of the Square instead of proceeding to that at the other.

As to the conduct of the audience during the speeches, before the dispersal order, there was occasional handclapping (T. 67, 69) and according to the *Times* reporter "ordinary cheering . . . not particularly restrained, but I would not say it was a ruckus, or shrill, or anything like that" (T. 286).[5]

The prosecution testimony that thousands of pedestrians on the sidewalks facing the Square stopped to look at the meeting (T. 211-212) is wholly incredible, considering the *Times* reporter's testimony that the meeting attracted little attention and considering that it was uneventful prior to the advent of the horses. The Appellate Term opinion seems to assume that this prosecution testimony referred to the period after the order to disperse (*infra* A-7). In any event, even if such an occurrence could be relevant to petitioners' convictions,[6] there is no indication that the

---

[5] One of the Bureau of Special Services policemen testified that before the meeting began a group of unspecified size chanted "'Down with American imperialism' and 'Stop the war in Vietnam' and things of that nature" (T. 210). However, there was no indication that the alleged chant could be considered a disturbance of the peace.

[6] See *Edwards* v. *South Carolina*, 372 U. S. 229, 237.

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alleged viewing of the meeting caused or threatened any obstruction or disturbance.

Most of the prosecution evidence related to the acts of individual petitioners in the period of the police effort to physically disperse them, between the advent of the horses into the Square and petitioners' arrests. Nine of the prosecution's eleven witnesses were policemen who had come to the Square only at the time of the dispersal order, each testifying as to additional individual acts.[7] There was no evidence of acts of violence, profanity or obscenity by petitioners, their most opprobrious term being "fascist police" or "fascist cop" as the policemen tried to drive them off the Square. While the policemen described petitioners as running around in the Square and "screaming", their "screaming" consisted mainly of declarations and calls to each other, as they scattered to avoid the horses, as to their right to continue the meeting (e.g., T. 82-85, 93-94). They submitted to arrest as soon as the police sought to arrest them. For example, the officer who arrested petitioner Rhoads testified:

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> "There was a melee in Duffy Square itself and everybody was running around yelling 'fascist cops' and this and that and I observed Rhoads running towards the steps of the Square itself and I followed him up and told him he would have to leave the Square. If he didn't, he would have to be placed under arrest because he was part of the general disturbance there and he said he didn't want to leave and I told him if he didn't leave the second time I was going to place

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---

[7] None of these acts were included in the charges, and the evidence thereof should have been excluded in response to petitioners' due process objection (see *infra* pp. 12-14).

him under arrest and I placed him under arrest and I took him down from the center of Duffy Square by the monument there" (T. 105).

Similarly the officer who arrested petitioner Gellis testified:

> "I said, 'Please move along. You are not accomplishing anything by standing here.' Again he ranted, 'You can't tell me what to do. I have my rights.' I said, 'Mister, I am going to arrest you if you don't move on', and he said, 'Go ahead and arrest me.' . . . Q. All right, what happened then? A. I informed him I placed him under arrest and walked across in front of the Square, which would be the south of the Square, and placed him in a cab" (T. 142-143).

The policemen emphasized that petitioner Maher hit one of the police horses with a rolled-up cardboard placard (T. 190). Mr. Maher testified without contradiction that he was attempting to keep the horse from trampling on another young man who had stumbled and was lying near the horse's feet (T. 322-328). None of the petitioners had or used any type of implement other than Mr. Maher's use of the rolled placard (see T. 297).[8]

---

[8] Several policemen claimed that petitioners Kunis and Eckhardt, who worked together as puppeteers and brought with them a puppet symbolizing anti-militarism, ran into the street after the order to disperse and lay down in the middle of Broadway (T. 127-128, 98-99). The petitioners testified that Kunis lay on the sidewalk and entirely denied the allegation as to Eckhardt (T. 354-355, 392, 407, 421-423). The *Times* reporter testified that he was "not sure if it was on the street or sidewalk" that he saw a person lying (T. 305).

Presentation of Federal Questions in State Courts

The amended remittitur of the New York Court of Appeals, the State court of last resort, states: "Upon the appeal herein there were presented and necessarily passed upon questions under the Constitution of the United States, as follows: Appellants contended that (1) their convictions violated the due process guarantee of the Fourteenth Amendment because they were based in whole or part on acts which were not charged in the complaint; (2) their convictions violated their Constitutional rights of free speech and free assembly, and (3) their convictions under subdivisions 2, 3 and 4 of section 722 of the Penal Law violated the due process guarantee of the Fourteenth Amendment because of vagueness. The Court of Appeals held that appellants' Constitutional rights were in no way violated" (*infra* A-2). The points listed by the Court were presented to it in petitioners' briefs and oral argument.

As to the lower State courts, the first point presented to this Court for review—that petitioners were convicted for acts that had not been charged against them—was raised repeatedly in objections to the introduction of evidence in the trial court (T. 39-40, 53, 103-104). Thus, petitioners' attorney objected

> "to any testimony as to the occurrences after Captain McAllister attempted to disperse this meeting, on the grounds that they are not within the allegations of the complaint. It would be a violation of due process to try people on charges which have not been alleged and which they have not had notice and are not included in the sworn complaints . . . " (T. 103-104).

And in argument to the trial court at the conclusio of the trial, counsel stated:

> "Again, at the risk of repetition, I want to say that the complaint is obviously based on the conduct of the whole group. There is no implication in these charges whatsoever, that there would be any attempt to prove . . . or that there would be any evidence about individual physical acts, as to which testimony has been admitted; . . . therefore there can be no conviction based on those acts consistent with due process of law" (T. 500).

In the lower appellate court, the Appellate Term of the Supreme Court of the State of New York (hereinafter called Appellate Term), petitioners' briefs presented the point as a matter of State and Federal due process. One judge rejected it *sub silentio* (A-16 *infra*); one judge may or may not have considered it (A-33); and the dissenting judge accepted this Constitutional argument, relying on the decisions of this Court as to Federal due process (A-37).

The second question presented for review here—that the convictions violate the guarantees of freedom of speech and assembly—was argued to the trial court. Petitioners' attorney asserted that "conviction on the evidence that has been presented would violate the State and Federal constitutional guarantees of free speech and free assembly" (T. 487) and quoted at length from this Court's decisions under the Fourteenth Amendment, in particular *Edwards v. South Carolina*, 372 U. S. 229 (T. 495). The Federal Constitutional point was presented in brief and oral argument to the Appellate Term; the Court's opinion explicitly rejected it (A-23-25) and the dissenting opinion explicitly accepted it (A-35-38).

The third Constitutional question, as to the vagueness of the statute, was presented by brief in the Appellate Term, which rejected it (A-15-16).

Reasons for granting the writ: the State courts have decided Federal questions of importance to the maintenance of due process and freedom of expression, in a manner contradictory to this Court's decisions.

I.

The State courts refused to abide by the principle that "conviction upon a charge not made would be a sheer denial of due process." *De Jonge* v. *Oregon,* 299 U. S. 353, 362. See also *Garner* v. *Louisiana,* 368 U. S. 157, 164; *Thompson* v. *Louisville,* 362 U. S. 199, 206; *Cole* v. *Arkansas,* 333 U. S. 196, 201. In *DeJonge,* due process limited the courts to consideration of the charged act, though there as here the State might have accused the defendant, considering the evidence introduced against him, of other acts violative of the statute under which he was convicted (299 U. S. at pp. 362, 360; Record on Appeal in this Court, pp. 20-31).

Certainly the complaint here gave no notice to petitioners that they were charged with the individual misfeasances subsequent to the dispersal order that predominated in the prosecution testimony, such as hitting a police horse or lying in the street.[8a] Rather, as the dissenting judge in Appellate Term pointed out, the complaint was an "omnibus charge made against all" petitioners for acts in common during the meeting (A-36), raising the issue of whether they could consistently with the First Amendment be punished for holding the assembly and failing to move on.

[8a] Compare *Russell* v. *United States,* 369 U. S. 749, 764.

Grant of this petition is important because the *DeJonge* principle was here transgressed in ways that this Court has not yet reviewed. In the first place, evidence of acts other than those charged was continually introduced over petitioners' due process objection. If the purported individual misfeasances had been charged in the complaint, petitioners would have been on notice of the need to move for separate trials to avoid confusion and prejudice to one petitioner from the claimed acts of another.

The petitioners apparently were convicted, and their convictions upheld, in whole or part on the basis of uncharged purported acts.[9] Throughout the proceedings however, petitioners have been unable to know definitely of what each was convicted. Concomitant with the basic due process violation, petitioners were deprived at the trial of the clarity in the determination of guilt that is derived from a judge or jury's focus on charged acts. And on their appeals they were deprived of the benefit of the courts' knowledge of the basis of their conviction, with review on that basis (compare *Ashton* v. *Kentucky,* 384 U. S. 195, 198; *Kent* v. *United States,* 383 U. S. 541, 561; *Frank* v. *Mangum,* 237 U. S. 309, 327).

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[9] The trial judge and the Court of Appeals indicated that they viewed these acts as the partial or total basis for conviction, in that they overruled petitioners' due process objection (*supra,* p. 10; *infra,* A-2). And see Appellate Term opinion as to these acts, *infra,* A-19-20.

Grant of this petition is further warranted because the due process violation is here interwoven with First Amendment rights. Just as due process in regard to the certainty and definiteness of a statute is of particular importance when First Amendment rights are at stake,[10] so also is the due process principle here involved. A frequent instrument for arrests arising from expression of unpopular opinion is, as here, an umbrella statute embracing numerous types of violations (e.g., *Cox* v. *Louisiana*, 379 U. S. 536; *Edwards* v. *South Carolina*, 372 U. S. 229; *Ashton*, 384 U. S. at p. 199). Thus, a shift to some other alleged violation under the same statute is a special threat in the First Amendment area, in the event that the original charge comes to appear unsupported or vulnerable to Constitutional challenge (e.g., *Cole* v. *Arkansas; DeJonge* v. *Oregon*, *supra*). The hazard of asserting First Amendment rights increases if the individual is subject to such an unfair prosecutorial advantage, and if interference with free expression can be justified on the basis of an afterthought, as attempted in the case at bar.

II.

Protection of the minority's right of expression on issues of national importance, requires this Court's consideration of the second point presented for review. The question is whether, as the dissenting judge in Appellate Term asserted, "a fundamental right was suppressed under guise of preserving order" (A-37, *infra*).

Insistence on a showing by the State of a real and substantial inconvenience in other street uses, is the only means of preventing discrimination against unpopular causes wh assemblies are regulated under a broad statute (compare *Cox*, 379 U. S. at p. 558, and opinion by Mr. Justice Black, at pp. 577-581; *Edwards*, 372 U. S. at p. 236). The petitioners' offer of proof that use of Duffy Square was permitted for popular causes such as bond rallies, was rejected; but in any event, it would be difficult to prove that a meeting by a minority was prohibited under precisely the same traffic conditions as a popular assembly was permitted. Political dissent must therefore rely for equal protection upon enforcement of the principle that the State must refrain from suppressing expression unless it causes a real and substantial interference with other uses of the street.

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[10] *Ashton*, 384 U. S. at p. 200, n. 2; *Burstyn* v. *Wilson*, 343 U. S. 495, 505-506.

Here this standard was decimated. The only judge who explicitly ruled that the order to disperse was reasonable, upheld it merely on the basis of the general power of the State to prevent disorder "in heavily-trafficked areas where vehicles and pedestrians are or may be obstructed" (*infra*, A-23-24).[11]

Because the meeting was held four or five blocks from Times Square,[12] the Appellate Term opinion emphasized, as have the prosecution briefs, the sentence in this Court's *Cox* opinion that one could not "contrary to traffic regulations, insist upon a street meeting in the middle of Times Square at the rush hour . . . " (A-25). But this Court did not mean, as is apparent from *Cox* itself (see 379 U. S. at p. 548, n. 12; p. 550), that controlling principles as to First Amendment rights can be abandoned and that unpopular meetings—either for civil rights in the South or "leftist" views in the North—can be relegated to inconspicuous locations, with the conspicuous reserved for popular causes. Under this Court's opinions, the right to dissent is the right to try to persuade others, so long as the dissenters cause no substantial inconvenience in other street uses.

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[11] The trial judge gave no indication of whether, or what, inconvenience in the use of the streets justified the order to disperse.

[12] While "Times Square" itself is a block occupied by a building, the surrounding area is sometimes referred to by that name.

The testimony of the *New York Times* reporter, the only disinterested witness, that the meeting was peaceful, orderly, small relative to the dimensions of the open and unused section of the Square, posing no threat or inconvenience and indeed attracting little attention, stands without any substantial contradiction. As the dissenting judge in Appellate Term said: "No one had indicated any purpose other than by word of mouth to draw attention to the sponsors' opposition to the Viet Nam war. All was peaceful—neither pedestrian nor vehicular traffic had been perceptibly slowed—certainly neither was halted" (*infra*, A-34).

Assuming the credibility of the prosecution testimony that auditors and pedestrians stood or walked in the street bordering one part of the Square, the order to disperse was nevertheless unjustifiable. If the police in good faith had been concerned with this alleged traffic situation, they could have easily, and doubtless would have, ordered a slight narrowing of the gathering on the Square—considering the large cleared area available and the entirely peaceful character of the assembly prior to the advent of the horses (compare *Edwards*, 372 U. S. at p. 232, n. 5). Under this Court's doctrines, a measure less suppressive of First Amendment rights than the drastic order to disperse, should have been given; a slight irregularity in traffic condi-

tions, of a type commonly tolerated or regulated, can
be used to justify suppression of minority opinion.

Since the meeting was a lawful exercise of First Amendment rights and the order to disperse unconstitutional, the State cannot punish the petitioners' failure to obey it. See *Shuttleworth v. Birmingham*, 382 U. S. 87; *Henry v. City of Rock Hill*, 376 U. S. 776, 777; *Cox, supra*, 379 U. S. at pp. 543-544; *Edwards, supra*, 372 U. S. at p. 233.

Assuming *arguendo* that petitioners' acts following the dispersal order are in issue, this Court's review of whether they fall within the protection of due process and the First Amendment seems essential. What the Appellate Term opinion characterizes as "inciting to disorder" and "generally causing bedlam" (A-19, *infra*), were petitioners' reasonable efforts to continue their meeting. The police did not permit petitioners merely to stand their ground and submit to arrest; the "commotion which inevitably ensued was the result of the gratuitous and forcible invasion of the rally by the police—not the conduct of the defendants . . . the efficient, moving cause of any disturbance was the unlawful police action" (A-36, *infra*, dissent in Appellate Term). If charges can be leveled on the basis of reasonable efforts to continue a lawful meeting and of reactions occasioned by police methods of enforcing an order to move on, a new method of frustrating First Amendment rights will be initiated.

CONCLUSION

It is respectfully submitted that this petition should be granted.

Respectfully submitted,

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July, 1966

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APPENDIX

APPENDIX

Judgment of the Court of Appeals of the State of New York

People of the State of New York against William Turner and others.

Pleas in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 2nd day of June in the year of our Lord one thousand nine hundred and sixty-six, before the Judges of said Court.

Whereup the said Court of Appeals having heard this cause argued by Nanette Dembitz, of counsel for the appellants and by Mr. Frederick P. Hafetz, of counsel for respondent, and after due deliberation had thereon, do order and adjudge that the judgment herein be and the same hereby is affirmed.

And it was also further ordered that the record aforesaid, and the proceedings in this Court, be remitted to the Criminal Court of the City of New York, there to be proceeded upon according to law.

June 2, 1966

fendant Jerome was told to "move away" after he was observed "running from one group to another around the park", behind a mounted policeman who was attempting to disperse the crowd, and shouting that the demonstration was lawful and "the fascist police had no right to stop them". Jerome refused to move and was arrested.

Patrolman Engelhardt testified that he arrested the defendants Shallit and Chadwick. Miss Chadwick "was standing on the sidewalk yelling" to officers who were attempting to remove the defendant Kunis after he lay down in the street, "Leave him alone facists [sic]". Chadwick then sat down on the sidewalk herself, refused to get up, and when the officer "went to pick her up * * * she started punching me and went to bite me". Defendant Shallit was shouting to the demonstrators not to move, calling the police "fascists" and shoving and pushing officers.

Patrolman Coffey testified that defendant Rhoads was screaming and running, and when he refused to leave the Square, he was arrested. As the officer was taking Rhoads to a commandeered cab, "Ostrow came over and told me to leave the defendant (Rhoads) alone"—he (Ostrow) was screaming "fascist cop" and was told to be quiet or he would also be arrested. He refused and was arrested.

Patrolman Campbell testified that after Captain McAllister spoke to Laub about dispersing, Laub, through the megaphone, told the crowd not to break up and called the police "fascist cops". The officer asked Laub "to move off the sidewalk", Laub refused and was arrested.

Officer Hines testified that defendant Copeland spoke to the crowd through a megaphone and "was going back and forth across Duffy Square". Copeland was asked if he had a permit for use of the megaphone, claimed he did not need one, was ordered to leave the area, refused, and was arrested.

Patrolman Fahy testified that defendant Kunis was "yelling and screaming 'fascists, police brutality, gestapo' ", was told to stop or be arrested, ran "into the middle of Broadway and laid down", refused to move, causing traffic to back up, and was arrested and carried to a radio car. Defendant Eckhardt was also "lying" in Broadway, refused to get up, and was assisted to his feet and then arrested.

Patrolman Knoll testified that defendant Gelles was standing on the sidewalk with two others, was told he was blocking traffic and should move, ranted at the officer about "fascist cops", refused to move on, invited his own arrest, and was arrested. The officer was placing Gelles in a cab when he saw the defendant Kyllingstad slap a police sergeant with whom she had been "loudly conversing". She was then arrested.

Patrolman Walsh testified that he arrested the defendants Apter, Martin and Teahan. Apter was running back and forth from street to sidewalk telling the crowd not to obey the police orders, was told to desist, continued his shouting to the crowd, and was arrested. He then threw himself on the ground and, as the officer tried to put him in a cab, defendants Martin and Teahan intervened and attempted to take Apter away while yelling "Police brutality * * * gestapo". They were warned to move away or be arrested, refused, and were arrested.

Upon cross-examination, Officer Walsh testified that in his opinion there were "about 250 to 300" people present at the demonstration, traffic was stalled because "at intervals the crowd would keep running back and forth into the street with placards * * * so, we attempted to get them back on the sidewalk, to put the traffic through".

Patrolman Annitto testified he arrested the defendants Maher and Turner. Maher was "running around * * * waving a placard. He struck a police horse with the placard" and was arrested. "Turner was screaming and hollering and trying to keep two policemen from keeping the prisoner they were trying to bring to the car".

Defendant Philip Luce, the first witness called by the defense, testified that he arrived at Duffy Square on August 8, 1964, at approximately 3:45 P. M. He was an organizer and leader of the meeting and about 10,000 leaflets had been distributed around the city announcing the meeting. Before the speeches started, Luce and some others present were told by a uniformed policeman:

> " * * * that we could not hold a meeting there; that there was a ban on demonstrations in Times Square; that we could move either north of 59th Street or south of 40th Street and hold a meeting; but that no meetings would be allowed within that area."

Luce further testified that about 20 or 25 people were given identifying arm bands and were placed around the perimeter of the Square "in charge of keeping the crowd orderly" and preventing people from going out into the street. About 100 to 150 people were gathered at the Square for the speeches. Laub opened the meeting by stating it would be "a peaceful, orderly meeting", introduced him (Luce) and he spoke briefly on behalf of the "May 2nd Movement". Luce then turned over the meeting to Copeland. The people assembled did not push, shove, fight or carry weapons. "The entire assembly" was on the Square, not on the street, and there was no interference with vehicular traffic. After Copeland had spoken for 15 or 20 seconds, a police officer informed them that the meeting was illegal and had to be terminated. Copeland continued speaking and Laub then repeated the officer's command to the crowd. There was no disturbance until suddenly about 12 foot police appeared and two mounted police rode into the crowd and arrests were made.

Upon cross-examination, Luce testified that he, Laub, and Copeland used the megaphone and it was possible that some people were on the street as well as the sidewalk.

Joseph Lelyveld, a New York Times reporter, was called for the defense and testified that he arrived at Duffy Square shortly before 4:00 P.M. and none of the demonstrators had yet arrived. About 15 minutes or half an hour later, people with signs arrived, some distributing leaflets, and the speakers, standing on the steps, began the proceedings. There were no more than 60 people listening and they were all compactly on the sidewalk of the Square. The situation became chaotic after the police requested the crowd to disperse, and several people started speaking at once, protesting the police order and announcing defiance of it, after which the police moved in. The witness did not think there was any interruption with traffic prior to the police moving in to disperse the crowd. The number of people on Broadway and Seventh Avenue seemed normal for a Saturday afternoon in the summer of 1964.

Upon cross-examination, Lelyveld testified that as the meeting was being dispersed, "traffic was pretty well stopped, because prowl cars were converging on the park and all empty taxicabs were being stopped". The witness saw a girl hit a policeman and a boy lie down and hold himself stiff while being carried into a police car. He did not recall seeing any of the demonstrators on the street although he was unable to observe the entire area.

Defendant Albert Maher testified that he hit a police horse with a rolled-up placard in order to make it shy away and to prevent it from stepping on a person who had fallen to the ground. The witness estimated the size of the gathering at about 100 people.

Defendant Ostrow testified he was given an arm band and designated as a monitor to help maintain order and keep those attending the meeting within Duffy Square itself and not out on the street. He estimated there were between 80 and 100 people present.

Defendant Teahan testified that he saw Kunis lying on the sidewalk (not the street) and then being carried by the police to a car. He alleged he was pushed around by several policemen, finally being pushed into the road in front of a squad car and was then "grabbed" by an officer, who said, "Come along with me" and took him to a commandeered cab, put him in and "proceeded to punch me in the mouth, with two witnesses (defendant Martin and Officer Walsh) present". He denied trying to pull the defendant Apter away from Officer Walsh.

Defendant Martin testified he had come to the meeting to speak, and, after seeing Copeland and Meisner led away by the police, he followed and:

> "* * * was approached by an officer who said, 'Do you want to go too, Bud?' and I could see him only out of the corner of my eye. I reeled a little bit, and he grabbed me under an arm; and another officer grabbed me under this arm; and they carried me to a cab, where the defendant Apter and Patrolman Walsh were already in; and they threw me in the front seat."

Martin denied having interfered with the arrest of defendant Apter, but admitted he "may have" yelled things, like "fascist police", "brutality", etc. He also denied resisting arrest but claimed he was in severe pain because the police were poking him in the kidneys.

Defendant Apter denied sitting or lying down in Duffy Square. He was a monitor with an arm band, designated to keep order and prevent people from "spilling into the street or obstructing traffic". He admitted he was running around and screaming "fascist cops".

Defendant Eckhardt testified that he had followed defendant Kunis as Kunis was being carried to a patrol car after sitting down on the sidewalk. He was not taken [illegible] the car or even touched by the police and was told he w[illegible] arrested after arriving at the station house. He denied lying down on the street.

Defendant Chadwick testified that she saw defendant Kunis either lie down or sit down on the sidewalk and then lifted and taken to a patrol car by the police. She never saw Eckhardt sit or lie down. She admitted trying to bite Officer Engelhardt but did not believe she punched him.

Defendant Kunis testified that he sat down on the Square. He saw horses "turning in circles around, knocking people all over, and policemen on the horses swinging their clubs at people" and "I had no other recourse but to sit down and refuse to cooperate with the people inflicting what I saw upon the crowd". Upon cross-examination, Kunis a[illegible]mitted that "when the police came to take me I went completely limp and laid down"—on the sidewalk, not on the street. His body was in a stiff position while being carried and he did not intend to cooperate with the police.

Defendant Kyllingstad testified and denied that her "actions could have been construed as slapping a police officer". She admitted she struck an officer on the back in the course of attempting to convince him not to arrest defendant Laub.

Defendant Meisner testified he made no noise prior to the time the police began dispersing the crowd, but then yelled, "Let them speak" and may have shouted "that they did not have to leave; that they had a right to speak; that that was a constitutional right". He denied having refused an officer's request to leave the sidewalk.

Defendant Turner testified he was not a member of any sponsoring organization but was asked by Laub and agreed to serve as a monitor to "help maintain order, to allow for pedestrian traffic, and to keep people out of the street". He estimated that "possibly 100 people, and no more, were in attendance at the meeting" prior to the arrival of the police. After the order to disperse, the crowd was chanting "Let them speak". He added:

> "Well, the chanting continued for about—no more than a minute and a half, when nothing happened, when the Captain and a few patrolmen who were in a line across the front of the steps left the scene; and, suddenly, the patrolmen and the horses came from each side of the Square, behind the monument; and they appeared to charge headlong into the center of the crowd, and then began to move around, forcing people off the sidewalks on either the west or the east side of Duffy Square."

Upon this appeal, defendants-appellants argue: (1) that the record fails to show "substantial interference with normal traffic movements" prior to the police order to disperse so that there was no violation of Penal Law, Section 722 and therefore, the order to disperse was without authority and failure to obey it was not unlawful; (2) the order to disperse was an unwarranted interference with appellants' constitutional rights to freedom of speech and peaceful assembly as those rights have been enunciated by the United States Supreme Court; (3) if Captain McAllister's order was based on a general police ban of all meetings and demonstrations in the area, "such a ban over an extensive area for an indefinite time is clearly unconstitutional"; (4) under the circumstances, both the meeting and appellants' failure to obey the order to disperse were constitutionally protected conduct; (5) evidence of any of the appellants' conduct following their refusal to obey the order to disperse may not be considered in support of their convictions; and (6) subdivisions 2, 3, and 4 of Penal Law, Section 722, as applied to street meetings, are so vague and uncertain as to be violative of due process of law.

Firstly, let it be said that the evidence in the record of a general police ban on meetings in the area is, at best, very sketchy and would clearly be an insufficient basis upon which to premise the prosecution's case.

Secondly, although the prosecution introduced evidence that Duffy Square was technically a "park" and that Park Department Regulations require a permit for public meetings, it is clear that such evidence was not subsequently relied upon in any fashion and is not urged as a basis for sustaining the convictions here. This aspect of the case will not be considered.

Thirdly, while subdivisions 2, 3 and 4 of Penal Law section 722 contain terms which are general and may be subject to differing interpretations, it need not follow that they are, therefore, too vague and indefinite to adequately provide guide lines for appropriate and inappropriate conduct at street meetings. The provisions of these subdivisions have been many times the ready subject of reasonable construction and application to public behavior, oftentimes proscribing it, while frequently rejecting, as unlawful, its inhibition (see e.g., People v. Bogin, 248 N.Y. 530; People v. LoVecchio, 185 Misc. 197; People v. Hussock, 23 N.Y.S. 2d 520, cert. den. sub. nom. Hussock v. New York, 312 U.S. 659).

It should be noted that it is unquestioned that evidence of a violation of any subdivision of section 722 of the Penal Law will support a conviction thereunder, regardless of whether the complaint charges a defendant under one particular subdivision or another (People v. Carcel, 3 N Y 2d 327, 331; People v. Hipple, 263 N.Y. 242, 244). Such being the case, the convictions would be proper if based on proof of conduct violative of any subdivision and it is clear that the trial court may have convicted certain defendants on the basis of conduct after the police order, and others for their conduct prior thereto. There is therefore no substance to the contention that conduct after the order may not be considered because the trial court may have found certain defendants guilty without proof of any such conduct. Further, there is ample in the wording of the complaint to justify sustaining the charges by evidence of conduct after the order. The complaint charges unlawful congregating, obstruction of pedestrian and vehicular traffic, noisiness, causing a crowd to collect, and a failure to follow the police order to disperse. Clearly defendants' conduct after the order is material and proper in showing the failure to obey it. I believe such proof to be proper within the charges for violations falling under subdi- sions 2 and 4 also.

We come then to the heart of the case—the lawfulness of the defendants' conduct and the appropriateness of the police command. Treating initially the charged violations under subdivision 2, our Court of Appeals has frequently weighed the nature and effect of a defendant's conduct as judged by the standards of this provision of Penal Law, section 722. As stated by the Court (per Burke, J.) in People v. Carcel, 3 N Y 2d 327, at pages 331, 332:

> "* * * The common-law definition of 'breach of peace', though not controlling, is helpful in ascertaining the nature of the acts proscribed by the statute. In *People* v. *Most* (171 N.Y. 423, 429) it was defined as a 'disturbance of public order by any act of violence, or by any act likely to produce violence, or which, by causing consternation and alarm, disturbs the peace and quiet of the community.' (See *People* v. *Perry*, 265 N.Y. 362, 364; *People* v. *Pieri*, 269 N.Y. 315, 322; *Cantwell* v. *Connecticut*, 310 U.S. 296, 308.) Guided by this definition, the courts have indicated that *something more than a mere inconveniencing of pedestrians* is required to support a conviction under subdivision 2. As was stated in *People* v. *Nixon* (248 N.Y. 182, 187-188), 'Men and women constantly congregate or walk upon the streets in groups, quite oblivious of the fact that in some degree they are thereby causing inconvenience to others using the street. A public meeting may have aroused such interest that groups of men and women continue the discussion while walking up and down the street. Groups linger in quiet social converse after the religious edifice where ser-

> vices have been held is emptied. School children and college youths, laborers, athletic "fans" and church members, perhaps even judges, do at times congregate or walk upon the streets in numbers sufficient to cause other pedestrians to stand aside or step into the roadway. Surely such conduct is not always "disorderly" and does not always tend to a breach of the peace.' In the *Nixon* case it was held that there was insufficient evidence to warrant a conviction under subdivision 2 of section 722, although it was shown that the 20 defendants were parading on a New York City street 4 abreast on a sidewalk only 12 feet wide. 'The regular amount of traffic was just barely getting through' (p. 185) and the obstruction caused by the pickets was such that some people were caused to enter the roadway to pass. Certainly the evidence against defendants in the case at hand was no more impressive than that offered by the People in the *Nixon* case. There is absolutely no showing here that defendants caused any *serious* annoyance to pedestrians or that their manner was threatening or abusive. Indeed, the only evidence upon which the conviction might be predicated was the arresting officer's simple statement that, the defendants 'were blocking the pedestrians' right of way'. That evidence we hold to be insufficient (*People* v. *Nixon, supra; People* v. *De Cecca,* 6 Misc 2d 213; *People* v. *Kieran,* 6 Misc 2d 245; *People* v. *Barisi,* 193 Misc. 934, 935; *People* v. *Lo Vecchio,* 185 Misc. 197)." (Emphasis supplied.)

It is difficult to precisely define just how "serious" the annoyance or interference must be and the evidence did not clearly establish which, if any, of the defendants could be deemed in violation of this subdivision (2) prior to the order to disperse, but the testimony of the arresting officers, apparently deemed credible by the Trial Court, reciting the individual defendant's conduct after the order, would, in my view, abundantly support the convictions under subdivision 2 of all save perhaps Laub and Copeland. Kunis, Chadwick, Eckhardt and Apter all lay down or sat down; all but Eckhardt were yelling and screaming and inciting to disorder. Meisner, Jerome, Shallit, Rhoads, Ostrow, Gelles, Kyllingstad, Martin, Teahan, Turner and Maher were running abount interfering with police officers, shouting and screaming and generally causing bedlam. All these defendants clearly acted "in such a manner as to annoy, disturb, interfere with, obstruct, or be offensive to others".

For me, it would be difficult, if not impossible, to justify this conduct even were it determined that the police order was improper and without lawful authority. While it is clear that "One cannot be punished for failing to obey the command of an officer if that command is itself violative of the Constitution" (Wright v. Georgia, 373 U. S. 284, 291-292; Henry v. City of Rock Hill, 376 U. S. 776), there is no support for the proposition, seemingly advanced here, that if the order were improper, any and all of defendants' subsequent conduct would be cloaked with an immunity to arrest. I do not believe the order to be improper, but quite aside from the import of a refusal to obey that order (a violation of subdivision 3 discussed *infra*), the defendants are properly chargeable with the nature and consequences of their acts. Even a completely unlawful police arrest will justify only "reasonable resistance" (People v. McNeil, 15 N Y 2d 717). An unlawful arrest would afford a defendant

> "the right to resist and use 'force and violence' against the officer 'in preventing or attempting to prevent an offense against his person' provided such 'force or violence used [was] not more than sufficient to prevent such offense' (Penal Law, § 246 subd. 3)" (People v. McNeil, 21 A D 2d 1, 2, affd. 15 N Y 2d 717).

But this does not sanction the conduct set forth here in defiance of a police order to disperse—not in defiance of an unlawful arrest and, in fact, prior to any arrest. Most emphatically, it cannot justify the conduct of those who sought to protest the arrests of others. There were no arrests made before the defendants conducted themselves in the manner set forth above and not before all of them were repeatedly warned to desist (cf. People v. Nixon, 248 N.Y. 182, where the arrests were made without warning). This is simply not a case where the convictions depend upon the conduct of the defendants in resisting an unlawful arrest (cf. People v. Cherry, 307 N.Y. 308).

In People v. Sara E. Penn et al, Appellate Term, February, 1964, No. 45, affirmed 16 N Y 2d 581, motion for reargument denied —— N Y 2d ——, September 30, 1965, this Court upheld convictions under subdivisions 2 and 3 based upon (1) the defendants' conduct in darting and sitting in front of and under trucks, thereby interfering with their movements and causing them to stop, and (2) the defendants' refusal to move when ordered to do so by the police. As was stated in the majority opinion in Penn:

> "While it is true that the Supreme Court of the United States has held that public grievances are within the constitutional protection of the First Amendment, it has also held that the manner of protest

is subject to reasonable regulation and control in the interest of public safety and order. (Cox v. New Hampshire, 312 U.S. 569; Giboney v. Empire Storage Co., 336 U.S. 490; Cantwell v. Connecticut, 310 U.S. 296). Also see: People v. Galamison, 43 Misc. 2d 72; People v. Martin, 43 Misc. 2d 355.

"In Cox v. New Hampshire, supra, at p. 574, The Court said:—

"'Civil liberties as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses. The authority of a municipality to impose regulations in order to assure the safety and convenience of the people in the use of public highways has never been regarded as inconsistent with civil liberties but rather as one of the means of safeguarding the good order upon which they ultimately depend. The control of travel on the streets of cities is the most familiar illustration of this recognition of social need. Where a restriction of the use of highways in that relation is designed to promote the public convenience in the interest of all, it cannot be disregarded by the attempted exercise of some civil right which in other circumstances would be entitled to protection. * * *'.

"In Giboney v. Empire Storage Co., supra, at p. 498, the Court said:—

"'It rarely has been suggested that the constitutional freedom for speech and press extends its immunity to * * * conduct in violation of a valid criminal statute. We reject the contention now. * * *'.

"In Cantwell v. Connecticut, supra, at p. 308, the Court said:

> " 'The offense known as breach of the peace embraces a great variety of conduct destroying or menacing public order and tranquility. It includes not only violent acts but acts and words likely to produce violence in others. No one would have the hardihood to suggest that the principle of freedom of speech sanctions incitement to riot or that religious liberty connotes the privilege to exhort others to physical attack upon those belonging to another sect. When clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order, appears, the power of the State to prevent or punish is obvious. * * *'."

See also Schneider v. State, 308 U.S. 147, where the Supreme Court struck down unconstitutionally restrictive ordinances against the dissemination of information or opinion but stated at pages 160-161:

> "Municipal authorities, as trustees for the public, have the duty to keep their communities' streets open and available for movement of people and property, the primary purpose to which the streets are dedicated. So long as legislation to this end does not abridge the constitutional liberty of one rightfully upon the street to impart information through speech or the distribution of literature, it may lawfully regulate the conduct of those using the streets. For example, a person could not exercise this liberty by taking his stand in the middle of a crowded street, contrary to traffic regulations, and maintain his position to the stoppage of all

> traffic; a group of distributors could not insist upon a constitutional right to form a cordon across the street and to allow no pedestrian to pass who did not accept a tendered leaflet; nor does the guarantee of freedom of speech or of the press deprive a municipality of power to enact regulations against throwing literature broadcast in the streets. Prohibition of such conduct would not abridge the constitutional liberty since such activity bears no necessary relationship to the freedom to speak, write, print or distribute information or opinion."

In the instant case we have no attempt to improperly limit opinion or its public expression. This was no effort to restrict, unconstitutionally, freedom of religion or dissemination of religious views (Cantwell v. Connecticut, 310 U.S. 296); nor to discriminate between conformist and nonconformist views; nor was there evidenced any form of prior restraint (cf. Burstyn v. Wilson, 343 U.S. 495; Kunz v. New York, 340 U.S. 290; Niemotko v. Maryland, 340 U.S. 268; Saia v. New York, 334 U.S. 558; Rockwell v. Morris, 12 A D 2d 272, pp. dism. 9 N Y 2d 791, cert. den. 368 U.S. 913). The conduct of the defendants here may not be properly likened to peaceful picketing and, as was noted in the dissenting opinion in *Penn,* the defendants there had not impeded street traffic and they had demonstrated in a private driveway rather than a public street—facts cogently different from those presented here.

Further, as stated above, I believe the police order to have been proper. Our state courts have upheld *reasonable* action of the police in seeking to disperse street meetings in areas where a breach of the peace or possibility of disorder may arise—especially in heavily-trafficked areas where vehicles and pedestrians are or may be obstructed (People v. Feiner, 300 N.Y. 391; People v. Hipple, 263 N.Y. 242; People v. Kunz, 205 Misc. 316; People v. Friedman, 14 N.Y.S. 2d 389). The police, in performing their duties,

> "* * * may give reasonable directions. Present at the point where the defendants were congregating they might early sense the possibility of disorder. Even a protest from pedestrians who were annoyed by the defendants' conduct might be a significant element in determining whether persistence in such conduct was wrongful" (People v. Nixon, 248 N.Y. 182, 188-189).

See also, People v. Galpern, 259 N.Y. 279, 281. As was most aptly stated by the United States Supreme Court in the recent case of Cox v. Louisiana, 379 U.S. 536, at pages 554-555:

> "* * * the rights of free speech and assembly, while fundamental in our democratic society, still do not mean that everyone with opinions or beliefs to express may address a group at any public place and at any time. The constitutional guarantee of liberty implies the existence of an organized society maintaining public order, without which liberty itself would be lost in the excesses of anarchy. The control of travel on the streets is a clear example of governmental responsibility to insure this necessary order. A restriction in that relation, designed to promote the public convenience in the interest of all, and not susceptible to abuses of discriminatory application, cannot be disregarded by the attempted exercise of some civil right which, in other circumstances, would be entitled to protection. One would not be justified in ignoring the familiar red

> light because this was thought to be a means of social protest. Nor could one, contrary to traffic regulations, insist upon a street meeting *in the middle of Times Square* at the rush hour as a form of freedom of speech or assembly. Governmental authorities have the duty and responsibility to keep their streets open and available for movement." (Emphasis supplied.)

In sum, it is my view that the police request to disperse was made in the line of a "duty and responsibility to keep their streets open and available for movement" (Cox v. Louisiana, supra, p. 555), but even if the order were unnecessary or improper, the subsequent conduct of the defendants would nevertheless be unjustified and violative of subdivision 2.

In view of the general police order which was announced to the assemblage, it would seem plausible that all defendants would appropriately be charged with a violation of subdivision 3 of Penal Law, section 722. There is, as well, testimony in the record of specific refusals to obey the order of an arresting officer in the case of all defendants excepting Kyllingstad, Maher and Turner. What then of the propriety of the convictions under this subdivision? Contrary to appellants' assertion, subdivision 3 would not, by its terms, "prohibit all street meetings". It requires both that defendant "congregates with others" and "refuses to move on when ordered by the police". There must be a showing of an actual or potential breach of the peace together with a congregating and refusal to obey the police order. Although those congregating may do so in an orderly and inoffensive way, in the absence of a showing that the police direction "was purely arbitrary and was not calculated in any way to promote the public order", the refusal to obey violates the statute (People v. Galpern, 259 N. Y. 279, 284-285).

Have recent Supreme Court decisions rendered untenable the interpretation thus placed on subdivision 3 by our State courts? I think not. Appellants rely heavily on Edwards v. South Carolina, 372 U.S. 229, and Cox v. Louisiana, supra, but analysis of the holdings there does not compel a determination that subdivision 3 is unconstitutional either on its face or as here applied.

In *Edwards,* 187 students, protesting discrimination, marched to the grounds of the State House in Columbia, South Carolina. They marched around the grounds, carrying placards, for approximately 45 minutes, and

> "* * * As they entered, they were told by the law enforcement officials that 'they had a right, as a citizen, to go through the State House grounds, as any other citizen has, as long as they were peaceful.'"

Some 200 to 300 spectators had gathered to observe the march and "nobody among the crowd actually caused or threatened any trouble" (372 U.S. at 231). Most importantly "[t]here was no obstruction of pedestrian or vehicular traffic within the State House grounds * * * [a]lthough vehicular traffic at a nearby street intersection was slowed down somewhat [and] an officer was dispatched to keep traffic moving". The police authorities then advised the group that there would be arrests unless they dispersed within 15 minutes.

> "* * * Instead of dispersing, the petitioners engaged in what the City Manager described as 'boisterous,' 'loud', and 'flamboyant' conduct, which, as his later

testimony made clear, consisted of listening to a 'religious harangue' by one of their leaders, and loudly singing 'The Star Spangled Banner' and other patriotic and religious songs, while stamping their feet and clapping their hands. After 15 minutes had passed, the police arrested the petitioners and marched them off to jail.". (372 U.S. at 233).

The Court, in reversing convictions based on a breach of the peace under State law, specifically stated:

> "We do not review in this case criminal convictions resulting from the evenhanded application of a precise and narrowly drawn regulatory statute evincing a legislative judgment that certain specific conduct be limited or proscribed. If, for example, the petitioners had been convicted upon evidence that they had violated a law regulating traffic, or had disobeyed a law reasonably limiting the periods during which the State House grounds were open to the public, this would be a different case. See *Cantwell* v. *Connecticut,* 310 U.S. 296, 307-308; *Garner* v. *Louisiana,* 368 U.S. 157, 202 concurring opinion). These petitioners were convicted of an offense so generalized as to be, in the words of the South Carolina Supreme Court, 'not suspectible of exact definition.' And they were convicted upon evidence which showed no more than that the opinions which they were peaceably expressing were sufficiently opposed to the views of the majority of the community to attract a crowd and necessitate police protection."

In other words, the thrust of the Court's holding, under facts markedly dissimilar from those with which we are confronted, was to vitiate a statute which was aimed at and employed for the purpose of inhibiting, by means of criminal sanction, "the peaceful expression of unpopular views". We have no such case here. There is no claim, nor could there be, that either the statute here involved or the police action taken was meant to restrict the expression of views, popular or unpopular. There is no discriminatory application alleged. Our determination is clearly made by means of "evenhanded application" of a regulatory statute which, reasonably construed, is meant to insure maintenance of order by "limiting or proscribing" certain conduct.

The opinion in *Edwards* specifically pointed out that the fact situation there presented "was a far cry from the situation in *Feiner* v. *New York*, 340 U. S. 315", where the Supreme Court last had an opportunity to interpret and pass upon the validity of subdivision 3 of Penal Law, section 722. In *Feiner*, the petitioner had been convicted in the Syracuse Court of Special Sessions for a violation of Penal Law, section 722, subdivisions 1, 2 and 3. His conviction had been affirmed in the New York Court of Appeals (300 N.Y. 391) and the Supreme Court granted certiorari to determine whether "* * * the conviction is in violation of his right of free speech under the Fourteenth Amendment". The petitioner, in March, 1949, had been addressing a street meeting in Syracuse attended by approximately 75 or 80 people "both negro and white, filling the sidewalk and spreading out into the street". He had been referring derogatorily to President Truman, the American Legion, the Mayor of Syracuse, and other public officials. Police officers observed the scene for a while and, after indications of excitement, restlessness and some pushing and shoving, the officers "stepped in to prevent it from resulting in a fight". Petitioner was three times requested to stop speaking but refused to do so while "the crowd was pressing closer around petitioner and the officer". The officer then arrested the petitioner and brought him down from the wooden box upon which he was standing. The conviction was premised primarily on petitioner's failure to "obey reasonable police orders" (subd. 3).

The Supreme Court, in affirming, stated:

> "We are not faced here with blind condonation by a state court of arbitrary police action. Petitioner was accorded a full, fair trial. The trial judge heard testimony supporting and contradicting the judgment of the police officers that a clear danger of disorder was threatened. After weighing this contradictory evidence, the trial judge reached the conclusion that the police officers were justified in taking action to prevent a breach of the peace. The exercise of the police officers' proper discretionary power to prevent a breach of the peace was thus approved by the trial court and later by two courts on review. * * * They found that *the officers in making the arrest were motivated solely by a proper concern for the preservation of order and protection of the general welfare, and that there was no evidence which could lend color to a claim that the acts of the police were a cover for suppression of petitioner's views and opinions.* Petitioner was thus neither arrested nor convicted for the making or the content of his speech. Rather, it was the reaction which it actually engendered.
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> "* * * This Court respects, as it must, the interest of the community in maintaining peace and order on

its streets. *Schneider* v. *State,* 308 U. S. 147, 160 (1939); *Kovacs* v. *Cooper,* 336 U. S. 77, 82 (1949). We cannot say that the preservation of that interest here encroaches on the constitutional rights of this petitioner." (340 U. S. at 319-320) (Emphasis supplied.)

In *Cox* v. *Louisiana,* supra, appellant, a leader of approximately 1500 students who had peacefully demonstrated in the vicinity of the Baton Rouge Court House, against discrimination generally and particularly the jailing of 23 fellow students, subsequently refused a sheriff's order to break up the demonstration as it was about to move uptown to several luncheon counters to protest discrimination there by means of a sit-in. Tear gas dispersed the demonstrators, and the following day appellant Cox was arrested, and later convicted of disturbing the peace, obstructing public passages and picketing before a court house. The Court, in reciting the facts, pointed out that the entire demonstration was orderly and peaceful and there was no obstruction of traffic. There was further evidence that the police had condoned the demonstration at the court house so long as the group remained on the "west sidewalk" and that Cox had kept them there. The only evidence of potential unrest was some "muttering and grumbling" by some whites as Cox spoke of the "illegal arrest" of the 23 students and then asked the crowd to move uptown to the lunch counters and sit in for an hour if they were refused service.

The Court, in reversing the breach of peace and obstructing public passages convictions, specifically held unconstitutional the Louisiana "disturbing the peace" statute (La. Rev. Stat., § 14:103.1), a statute markedly similar to Penal

Law, section 722, subdivision 3, and determined that the case was governed by the holdings in *Edwards* v. *South Carolina*, supra, and *Fields* v. *South Carolina*, 375 U.S. 44, constituting an infringement by Louisiana against Cox's rights of free speech and free assembly. The Court specifically held:

> "* * * Louisiana may not constitutionally punish appellant under this statute for engaging in the type of conduct which this record reveals, and also that the statute *as authoritatively interpreted by the Louisiana Supreme Court* is unconstitutionally broad in scope" (379 U. S. at 545.) (Emphasis supplied.)

The Court pointed out that the demonstration was "very well controlled" and the group was "orderly" and not, according to the sheriff's testimony, "objectionable" before Cox urged them to move uptown for the sit-in. The record further showed that the singing of the students resulted only in some cheering and applause by their 23 incarcerated fellows and the general mood was never "hostile, aggressive, or unfriendly". The Court found the arrest to be falsely cloaked in the power of the State to protect the public safety and order.

It is my view that the Court, in Cox, deemed the statute involved unconstitutional as it had been interpreted and applied in the State of Louisiana. I do not feel that the decision mandates a finding of unconstitutionality for subdivision 3 of our disorderly-conduct statute. (A reading of the concurring opinions in *Cox* v. *Louisiana*, companion case No. 49 [379 U. S. 559], supports this position.) There is no indication that the implicit upholding of the constitutionality of subdivision 3 in *Feiner* v. *New York*, supra, has

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been undermined (cf. language of Mr. Justice Clark, 379 U.S. at 589). Clearly, the application of subdivision 3 to the convictions here involved was not an attempt to suppress unpopular views, but was aimed solely at the maintenance of order and the avoidance of obstruction to vehicular and pedestrian traffic. There is no "unlimited power to order people off the streets", but rather an authority to reasonably regulate to avoid actual or potential breaches of the peace in the public interest. There is no evidence that administration of the statute here has been "otherwise than in a fair and non-discriminatory manner which the State court has construed it to require" (Cox v. New Hampshire, 312 U. S. 569, 577). Finally, it should be noted that the Court of Appeals in affirming this Court's determination in *People* v. *Penn,* 16 N Y 2d 581, was aware of the decision in *Cox* v. *Louisiana,* (see 16 N Y 2d at 582) and specifically held that there was no denial of the defendants' constitutional rights.

I am of the view that subdivision 3, as applied, remains constitutional and that the convictions are valid under both that subdivision and subdivision 2.

The judgments of conviction are affirmed.

CONCURRING MEMORANDUM

CAPOZZOLI, J.:

There is no doubt about the fact that each and every citizen is immune from arrest and prosecution if he engages in a peaceful, orderly and lawful demonstration for the purpose of dramatizing grievances or to call attention to political views. But demonstrations conducted in a disorderly and unlawful manner resulting in deprivation of the rights of other citizens, are not to countenanced and cannot be justified under the law.

In the case at bar, by virtue of the guilty verdict rendered by the court below, it must be concluded that the court found that the behavior of these defendants, and others, before the police ordered the termination of the meeting, was interfering with pedestrian and vehicular traffic. In view of that fact the police officers were duty bound to protect the public and were acting legally when they sought to end the meeting. (People v. Sara E. Penn, et al., Appellate Term, First Department, February 1964, No. 45, affd. 16 N Y 2d 581.)

Under the circumstances disclosed in the record the conviction was justified and must stand.

DISSENTING OPINION

Hofstadter, J.:

I dissent.

The 17 defendants were convicted of disorderly conduct (Penal Law, 722 [2, 3, 4]) under a single, omnibus complaint charging that on August 8, 1964, at 4:25 P.M., they unlawfully assembled at Duffy Square, "obstructing the area to the exclusion of those wishing to use the same" and delayed "vehicular traffic while carrying placards and using loud and boisterous language; by their actions did cause a crowd to collect; when ordered [by the police] to move on the defendants did fail to do so, after being informed that their actions were not lawful". None of these charges were established upon the trial, except only the admitted refusal of the defendants to disburse when ordered to do so by the police captain in charge of ten patrolmen, two mounted officers and a sergeant. Implicit throughout the record is that the police had decided to prevent the meeting before it assembled, though proof of this predetermination was erroneously foreclosed by the trial judge.

On this appeal, the People urged, and my brethren have accepted, as the basis for affirmance, the defendants' defiance of the police order and matters subsequent to it and attendant upon its forcible execution. I cannot agree; for this predicate of affirmance is without validity in divers aspects. The occurrences now offered as a basis for upholding the convictions were not the subject of the complaint charged. And the events, including any alleged disturbance by any defendant, ensuing upon the order, were the direct and immediate issue of a misconception by the police of the lawful warrant and scope of their authority.

The "May 2nd Movement" is a "peace" organization formed at Yale University. At 4 P.M. on August 8, 1964 it undertook to hold a rally at Duffy Square to protest against American involvement in the Viet Nam war. A captain of police ordered the group to disperse within five minutes after a speaker sought to introduce a chairman for the meeting. Nothing of substance had yet been uttered by either. No one had indicated any purpose other than by word of mouth to draw attention to the sponsors' opposition to the Viet Nam war. All was peaceful—neither pedestrian nor vehicular traffic had been perceptibly slowed—certainly, neither was halted.

When defendants refused to terminate the rally, the captain ordered his men on horseback and on foot to disrupt the assembly. Within 20 minutes after its inception, the order was executed; and the defendants were arrested and charged with disorderly conduct.

But, meetings such as this one are fully protected by t First and Fourteenth Amendments (as well as by th State Constitution—Article I, sections 8, 9). "Wherever th title of streets and parks may rest, they have immemoriall been held in trust for the use of the public; and, time ou of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing publ questions" (Hague v. C. I. O., 307 U. S. 496, 515; Kunz v New York, 340 U. S. 290, 293; Cox v. Louisiana, 379 U. S 536, 555). Before a rally may be dispersed, the speaker must have passed the bounds of argument or persuasio and undertaken incitement to riot (Feiner v. New Yor 340 U. S. 315, 321).

Only "when clear and present danger of riot, disorde interference with traffic upon the public streets, or othe immediate threat to public safety, peace or order, appears" may the State interfere with a demonstration (Cantwel v. Connecticut, 310 U. S. 296, 308). Absent these elements a demonstration may not be arrested (Edwards v. Sout Carolina, 372 U. S. 229; Fields v. So. Carolina, 375 U. S 44; s.c. 372 U. S. 522). No such conditions existed during th instant demonstration. Hence, the police were without warrant to proscribe or disrupt it. The order and action thereo had no justification; the resultant disturbance was part o the *res gestae* engendered by them—culpability for which i imputable to the police—not to the defendants.

The orders of the policemen could not make the conduc of the defendants, otherwise lawful, unlawful. "One cannot be punished for failing to obey the command of an officer if that command is itself violative of the Constitution" Wright v. Georgia, 373 U. S. 284, 291-292; Henry v. City of Rock Hill, 376 U. S. 776; People v. Collins, 44 Misc 2d 430, affd. 16 N Y 2d 554; see also Lombard v. Louisiana, 373 U. S. 267; Shuttlesworth et al. v. City of Birmingham, 373 U. S. 262; Johnson v. Virginia, 373 U. S. 61; People v. Galpern, 259 N. Y. 279, 281). Enforcement of the law must itself be lawful to serve as predicate for criminal charges.

The commotion which inevitably ensued was the result of the gratuitous and forcible invasion of the rally by the police—not of the conduct of the defendants. Confronted with the police assault, defendants could legally do what was reasonably necessary to resist the unlawful aggression (Penal Law § 246[3]; People v. Allen, 15 N Y 2d 558, 559; People v. Dreares, 15 A D 2d 104, affd. 11 N Y 2d 906; People v. Cherry, 307 N. Y. 308). "Lacking the essential warrant, having abused the authority which was their trust, the officers stood bereft of their usual prerogatives" (People v. Cherry, *supra,* at p. 311). In this context, defendants were liable to criminal sanctions only if they pursued a "counterattack merely for the sake of revenge or the infliction of needless injury" (People v. McNeil, 15 N Y 2d 717, 718). The record shows none; indeed, it renders it manifest that the efficient, moving cause of any disturbances was the unlawful police action.

Apart from these considerations, egregious error is compounded by affirmance founded on any alleged disturbance —by *some* defendants—following the dispersal order. Whether, in the case of any defendant, his conduct went beyond permissible protest is not before us, nor was it before the trial court. The complaint was not founded on any such claimed conduct. By it, none of the defendants were charged with assault or physical attack on policemen; none were accused of resisting arrest; none were charged with counterattacking the police. The only omnibus charge made against all—who were tried jointly—was that they had congregated at Duffy Square illegally; had impeded traffic; had caused a crowd to collect; and when ordered to move on, failed to do so. The evidence utterly fails to sustain this complaint.

It assumed the validity of the unlawful order. This ill-founded assumption taints the entire record. In the main, the evidence adduced on the trial was tangential, if not wholly irrelevant, to the only issue which could be properly agitated under the complaint, i.e.: the conduct of the defendants *before* police intervention. We may not perpetuate its vice here. The complaint was not adequate to sustain the charges upon which conviction was rendered by the trial court nor as the predicate of the offenses now pressed upon us to sustain that judgment.

To charge defendants with one crime and convict them of others is to violate every procedural concept of American jurisprudence. As it is a "violation of due process to convict and punish a man without evidence of his guilt" (Thompson v. Louisville, 362 U. S. 199, 206), "conviction upon a charge not made would be sheer denial of due process * * *. If the persons assembling have committed crimes elsewhere, if they have formed or are engaged in a conspiracy against the public peace and order, they may be prosecuted for their conspiracy or other violation of valid laws. But it is a different matter when the State, instead of prosecuting them for such offenses, seizes upon mere participation in a peaceable assembly and a lawful public discussion as the basis for a criminal charge." (De Jonge v. Oregon, 299 U. S. 353, 362, 365.) The convictions here may not stand—they were not based on charges made; and those set forth in the complaint were not substantiated in the evidence.

Stripped of the immediacies, here a fundamental right was suppressed under guise of preserving order. Judged

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: Part 2A

X

PEOPLE OF THE STATE OF NEW YORK,

-against-

HERBERT CALLENDER,

Defendant.

X

STATE OF NEW YORK } SS.,
COUNTY OF NEW YORK }

STEPHEN M. NAGLER, ESQ., being duly sworn, deposes and says:

1. I am an attorney admitted to practice before the Supreme Court of the State of New York. I represent HERBERT CALLENDER the Defendant herein.

2. The conviction of the Defendant was affirmed by the Court of Appeals in or about July, 1966. A motion to ammend the Remitittur was granted by the Court of Appeals of the State of New York in September, 1966. Notice of Appeal to the Supreme Court of the United States was filed on December 28,1966 and a Jurisdictional statement will be filed within sixty days thereafter, as required by the rules of the Supreme Court. On information and belief, a decision by the Supreme Court may not be expected before March 30, 1967.

3. I am presently serving as a legislative Counsel to the New York State Assembly. My duties require that during a subs substantial portion of this session of the Legislature, I be present in Albany on Mondays and Tuesdays. This is the reason for my failure to appear before this court on Monday,January 16th, 1967, and I beg the Court's indulgence at this time. At the time this case was last on the calendar of the Criminal Court, I was unaware that I would be holding this office, or that any circumstance would prevent me from appearing on

I have informed my client of my inability to appear on January 16th, 1967.

WHEREFORE, I RESPECTFULLY REQUEST that my absence and that of my client be excused, and that the within matter be adjourned to Wednesday, April 5, 1967.

Stephen M. Nagler

Stephen M. Nagler, Esq.

Sworn to before me
this 13th day of January, 1967

Carl Rachlin

CARL RACHLIN
Notary Public, State of New York
No. 24-3192200
Qualified in Kings County
Certs. filed with Kings & N.Y. Co. Clks.
Term Expires March 30, 1967

CRIMINAL COURT OF THE CITY OF NEW YORK

COUNTY OF NEW YORK, PART I C

---x

PEOPLE OF THE STATE OF NEW YORK,

-against-

DOCKET NO.
014246-64

HERBERT CALLENDER,

Defendant.

---x

S I R:

PLEASE TAKE NOTICE that upon the annexed affidavit of Stephen M. Nagler, Esq., and on all the previous papers, pleadings, process and proceedings heretofore filed and had herein the undersigned will move this Court, Part I C, thereof to be held in and for the County of New York, at the Courthouse, 100 Centre Street, County and City of New York, on the 28th day of September, 1965, at 10:00 o'clock in the forenoon or as soon thereafter as counsel can be heard for an order setting aside the conviction of the defendant above named and for a new trial and for such other and further relief as to this Court may seem just and proper.

DATED: New York, New York
September 20, 1965

Yours, etc.

STEPHEN NAGLER, ESQ.
Office and P.O.Address
40 East 49th Street
New York, New York

TO: HON. FRANK S. HOGAN, ESQ.
District Attorney,
New York County
Office and P.O.Address
155 Leonard Street
New York 13, New York

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

STEPHEN M. NAGLER, ESQ., being duly sworn, deposes and says:

1. I am an attorney admitted to practice in the State of New York. For the purposes of this matter, I am associated with Nathaniel Mitchell who represented and represents the aforementioned defendant.

2. This case was tried in the Criminal Court of the City of New York, County of New York before Hon. Mitchell J. Sherwin, Judge of the Criminal Court. The defendant was represented by Nathaniel Mitchell, Esq., at the trial. He was convicted of violating Section 722, subd. 1, 2 and 3 of the Penal Law. After the conviction, defendant retained Mr. Mitchell to prosecute an appeal to the Appellate Term. That appeal is now being perfected.

3. This is an application pursuant to Article 3, Section 33 (4) of the New York City Criminal Court Act for a new trial on behalf of the defendant.'

4. The defendant was convicted upon evidence that he, in the company of two men named Valentine and Woodall, visited City Hall for the purpose of arresting the Mayor of the City of New York. After being told that they would not be allowed in to accomplish their purpose, they insisted on waiting. There was testimony to the effect that Mr. Callender as well as Mr. Woodall and Mr. Valentine (who were arrested later and tried separately) were obstructing

the corridor and refusing to obey an order of a police officer that they leave.

5. It was not known to the defendant or his attorney at that time that Mr. Woodall was in reality Raymond Wood, an undercover agent and officer of the New York City Police Department (Mr. Wood is now a Detective First Class of the New York City Police Department) assigned to participate in and observe the activities of The Congress of Racial Equality (of which defendant Callender is a Field Secretary and, at the time of the incident, a Chapter Chairman). Thus, Mr. Wood was on duty acting in the capacity as a police officer at the time the three men were arrested. This fact, on information and belief, should have been known to the District Attorney of New York County and more specifically, Mr. Michael Metzger, an assistant District Attorney at the time of the trial. If a proper investigation had been conducted, it most probably would have been revealed. If it was known, it was concealed at trial. There is no doubt that the fact of Mr. Wood's true status was concealed by his superiors in the Police Department. Concealment of this material fact regarding Mr. Wood was highly prejudicial to the rights of the defendant in attempting to prepare and present his defense.

6. Defendant Callender at his trial, attempted to prove that there was no breach of the peace and that he and

Mr."Woodall" and Mr. Valentine, in a quiet and orderly manner were attempting to effect a citizens arrest for a misdemeanor as was their right, and attempting to find a police officer willing to assist them. Sergeant Burke and Lieutenant Delehenty of the detail of police assigned to duty at City Hall both confirmed that Mr. Callender had requested them to assist in making an arrest and they had refused to do so. As executive committee member of a CORE Chapter, Woodall investigated and approved the plan. Had it been known at the time of trial that Mr. "Woodall" was a police officer, defendant Callender would have claimed that Mr. "Woodall" was an agent provocateur. Furthermore, the incident might not have occurred, or occurred differently.

7. The exercise of the highest degree of diligence could not have procured this evidence of Mr. "Woodall's" true status for use at the trial. It was not until some time thereafter that defendant Callender and his attorney learned this fact.

8. If adduced upon a new trial this testimony would undoubtedly change the result. It is material; it is not cumulative; the failure to produce it was not owing to want of diligence. Indeed it is ascribable to active concealment, by responsible police officials. Plainly, two persons in the company of a police officer seeking to make a citizen's arrest in any orderly manner, are not guilty of any crime or offense.

9. The deponent, therefore, respectfully submits that pursuant to Section 33 (4) of the ~~Article 3 of the New York~~ City Criminal Court Act, Detective Raymond Wood should be brought before the court for personal examination and cross-examination under oath as to his role as a police officer and circumstances leading to his arrest and that of defendant Callender and Mr. Valentine.

WHEREFORE, your deponent respectfully suggests that a new trial be granted on the basis of concealment of material evidence and for such other and further relief as this Court may deem just and proper.

Stephen M. Nagler

Sworn to before me this
20th day of September, 1965.

State of New York
Court of Appeals

BEFORE: HON. STANLEY H. FULD, Associate Judge

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,

against

HERBERT CALLENDER,
Defendant-Appellant.

CERTIFICATE
GRANTING
LEAVE
BAIL

I, STANLEY H. FULD, Associate Judge of the Court of Appeals of the State of New York, do hereby certify that in the record and proceedings herein questions of law are involved which ought to be reviewed by the Court of Appeals and pursuant to §520 of the Code of Criminal Procedure permission is hereby granted to the above named appellant to appeal to the Court of Appeals.

Retyped

I further certify that in my opinion there is reasonable doubt whether the judgment of conviction will stand upon appeal to the Court of Appeals.

Bail as at present provided is fixed pending appeal to the Court of Appeals in the sum of $1,000.

Dated at New York, New York
February 9, 1966.

Stanley H Fuld
Associate Judge

Notice: Within 15 days from the date hereon an appeal must be taken and this certificate must be filed with the notice of appeal. An appeal is taken by filing in the clerk's office having the judgment roll (trial court) a written notice in duplicate that appellant appeals to the Court of Appeals (§522, Code Crim. Pro.) together with proof that another copy of the notice of appeal has been served upon opposing counsel (§521, Code Crim. Pro.). The appeal must be argued within 90 days from the date of the notice of appeal (§536, Code Crim. Pro.)

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: PART XXX

--X

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

HERBERT CALLENDER,

Defendant.

--X

S I R:

PLEASE TAKE NOTICE, that upon the annexed affidavit of NATHAN H. MITCHELL, sworn to the day of January, 1965, and upon all the papers and proceedings heretofore had, the undersigned will move this Court at a Stated Term Part XXX thereof, located at 100 Centre Street, New York, on the day of January, 1965 at 10:00 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order certifying that there is a reasonable doubt as to whether defendant's conviction and sentence for violation of Section 722, Subdivision 1, 2 and 3 of the Penal Law herein will stand on appeal, and granting defendant reasonable bail pending his appeal herein, and for such other, further and different relief as to this Court may seem just and proper.

Dated: New York, New York, January , 1965.

Yours etc.,

NATHAN H. MITCHELL
Attorney for Defendant
Office & P.O. Address
225 Broadway
Borough of Manhattan
City of New York

TO:

FRANK S. HOGAN
District Attorney for the
County of New York
155 Leonard Street
New York, New York

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART XXX
---X

THE PEOPLE OF THE STATE OF NEW YORK

-against-

HERBERT CALLENDER,

Defendant.

---X

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

NATHAN H. MITCHELL, being duly sworn, deposes and says:

That he is the attorney for the above named defendant and makes this affidavit in support of the application of said defendant for a Certificate of Reasonable Doubt and for admittance to bail pending determination of his appeal to the Appellate Term of the Supreme Court.

The defendant was heretofore arrested and charged with a violation of Section 722, Subdivision 1, 2 and 3 of the Penal Law, he thereafter proceeded to trial and was found guilty, and was sentenced to 60 days in the Workhouse on the 13th day of January, 1965.

Subsequent thereto, the defendant served and filed a Notice of Appeal to the Appellate Term of the Supreme Court on the day of January, 1965.

~~It is respectfully submitted that deponent believes the Judgment of Conviction is against the weight of evidence and contrary to law, and~~

Upon the trial, Seargent Burke testified that on the 15th day of July, 1964, the defendant approached him inside City Hall and stated that he wanted the officer to assist him in effecting a Civilian Arrest of the Mayor for violating Sections 1838 and 1865 of the Penal Law, he stated that he advised the defendant that the Corporation Counsel and Legal Bureau of the Police Department had informed him that there was no violation of the law and that such an arrest of the Mayor would be illegal.

The defendant spoke to some cameramen and reporters. "I told him that he was causing a crowd to collect and interferring with the normal business of City Hall by preventing normal business through the gate, and asked him to leave." (pp. 7-8 Court reporter's minutes)

"He ignored my request at that time. He spoke to reporters and spoke to other persons of that kind, and asked Lieutenant Delehanty to assist him in making the arrest of the Mayor." (P. 10 Court reporter's minutes)

The officer stated that he again approached him and told him that because of the crowd, that he obstructed the entrance to the Hall and interferred with the Mayor's business and told him to leave, that the defendant refused to move on, and was told he was under arrest, he was requested to accompany the officer which he did.

The officer further testified that there were more people in City Hall on this date than usual. (P. 14 - Court reporter's minutes)

That the people were there in connection with a gift to Mount Morris Park and also in connection with the signing of some local legislation.

He further testified that no one made any statement to him that they were unable to get inside the gate, nor did anyone make a complaint to him that they could not get in. (pp. 14-15 Court reporter's minutes)

He was unable to state whether any person attempted to get in, and testified in answer to that question, "I would be unable to interpret the persons actions as to whether they would be able to get in or not."

Seargent Burke further testified as follows:

Q I will ask you this, is it your testimony that Mr. Callinder's presence there obstructed people from going into the gate?

A Yes.

Q. But nevertheless is it a fair statement to say that no one approached the gate and asked to get in?

A They didn't ask me.

Q Do you have any knowledgewhether they asked anybody else?

A I don't have that knowledge.

Q Did you hear any one say I am trying to get in but I can't get through the crowd?

A No.

(P. 17 Court reporter's minutes)

Lt. Delehanty testified as follows:

Q Is it your testimony that Mr. Callinder's presence at this particular time, interferred with orderly business of City Hall?

A Yes.

Q Will you describe in what manner you say his presence interferred with the orderly business of City Hall?

A By his refusal to leave the area in front of the gate to allow the people that wanted to attend the Mayors Reception Room for the

Reception.

Q Did anyone complain that I am trying to get through to the Mayors Reception, or trying to get through to the Mayors Office, to you?

A No, they did not.

Q Do you have any one here who was annoyed, disturbed or obstructed by Mr. Callinder's presence?

DISTRICT ATTORNEY: Objection.

THE COURT: Sustained.

Q Do you have any other witness to this incident, other than yourself and Sgt. Burke?

DISTRICT ATTORNEY: Objection.

THE COURT: Sustained.

Q Did you at any time hear anything from the office on the inside of the desk, say, there are people who are trying to get in but they can't?

A Not to my knowledge.

Q Now, you say there came a time when certain people who were interested in the ceremony with respect to the gift of Mt. Morris Park.......

A No, sir.

Q What is your testimony, to who had gone upstairs?

A Most of the people in connection with the minimum wage law and the street changes.

Q It was their duty to go upstairs prior to going through the gate?

DISTRICT ATTORNEY: Objection.

THE COURT: Was it their duty?

A They were requesting to go up.

THE COURT: By who?

A By the patrolman at City Hall.

THE COURT: Would that be the normal procedure to tell them to wait up in that room?

A That would be, because there was something else going on in the Mayors Reception Room.

THE COURT: The Mayor was already being engaged in a transaction of official business at that time?

A To the best of my knowledge, so that nobody else could go in and the people who had to wait for him, wentup to the counsel chambers. He had waited to come down into the Reception Room.

Q Did you at any time hear Mr. Callinder say anything to the waiting people that was abusive or offensive to them?

A No, I did not.

(PP. 21-23 Court Reporter's Minutes)

It is respectfully submitted that deponent believes the Judgment of Convictions is against the weight of evidence and contrary to law, and further verily believes the conviction will be reversed by the Appellate Court. Further, defendant will have served a substantial portion of his sentence before his appeal can be perfected, if this application is denied.

No previous application has been made for the relief sought herein.

WHEREFORE, deponent respectfully prays for an order granting a Certificate of Reasonable Doubt, and admitting defendant to reasonable bail pending his appeal, and for such other, further and different relief as to this Court may seem just and proper.

Sworn to before me this

day of January, 1965.

Law Offices
Nathan H. Mitchell
225 Broadway
New York 7, N. Y.

Cortlandt 7-6242

July 14, 1965

George Schiffer, Esq.
40 East 49th Street
New York, N.Y. 10017

Attention: Mr. Steve Nagler

Re: People vs. Herbert Callender

Gentlemen:

Enclosed herewith please find copy of Trial minutes in the above captioned matter.

Please be advised that this case has to be noticed for the September Term.

Very truly yours,

Nathan H. Mitchell
NATHAN H. MITCHELL

NHM:mb
Encl.

APPELLATE TERM OF THE SUPREME COURT
FIRST DEPARTMENT

--------------------------------X

THE PEOPLE OF THE STATE OF NEW YORK, :

Respondent, :

-against- :

CORNELL GORE, :

Defendant-Appellant. :

--------------------------------X

Upon the annexed affidavit of NATHAN H. MITCHELL, sworn to the 12th day of July, 1965, and upon all the papers and proceedings heretofore had herein, Let the District Attorney of the County of New York, show cause at a Stated Term of this Court located at 60 Centre Street, New York, New York, on the 16th day of July, 1965 at 9:30 o'clock in the forenoon of that day or as soon thereafter as Counsel can be heard why an Order should not be granted vacating the Order of this Court dated the 7th *day of* June *, 1965, dismissing defendant's appeal herein, reinstating said appeal and further granting defendant an enlargement of time to perfect his appeal herein, and for such other, further and different relief as to this Court may seem just and proper.*

And during the meantime, and until there has been a determination on this application, Let all proceedings in the Criminal Court of the City of New York affecting the defendant-appellant herein be stayed.

Sufficient cause appearing therefor, Let service of a copy of this Order and the affidavit upon which it is granted on the Office of the District Attorney of New York County, on or before the 14th day of July, 1965 be sufficient.

Dated: New York, July 13th, 1965.

Bernard Botein
PResiding Justice of ~~the Supreme Court~~
Appellate ~~Term~~, First Department
DIVISION

APPELLATE TERM OF THE SUPREME COURT
FIRST DEPARTMENT

-----------------------------------X

THE PEOPLE OF THE STATE OF NEW YORK

Respondent,

-against-

CORNELL GORE,

Defendant-Appellant.

-----------------------------------X

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

NATHAN H. MITCHELL, being duly sworn, deposes and says:

That he is the attorney for the above named defendant-appellant, and that he is familiar with all the facts and circumstances attendant hereto, and makes this affidavit in support of a motion for an Order vacating the Order of this Court dated the 7th day of June , 1965, dismissing the defendant's appeal herein, reinstating the said appeal and further granting defendant an enlargement of time to perfect his appeal.

Deponent brings this motion by way of Order to Show Cause because he seeks a stay of the proceedings in the Criminal Court of the City of New York which deponent verily believes will result in the remand of the defendant on July 15, 1965, to execute the sentence previously imposed upon him.

The defendant was heretofore arrested on the 7th day of August, 1964, in the County of New York and charged with a violation of Sections 974 and 975 of the Penal Law of the State of New York, thereafter and on the 16th day of October, 1964, he proceeded to trial and was acquitted on the charge of violating Section 974 of the Penal Law, and convicted of violating Section 975 of the Penal Law, and thereafter sentenced on the 19th day of Jaunuary, 1965 to pay a fine of $500.00 or serve sixty (60) days plus six months in the workhouse.

It is respectfully submitted as follows:

1. The Notice of Appeal herein was served on the office of the District Attorney of New York County on or about the 28th day of January, 1965.

2. The Notice of Appeal was filed in the Office of the Clerk of the Appeals Bureau of the Criminal Court of the City of New York on or about the 28th day of January, 1965.

3. No prior extensions have been granted to perfect the appeal herein, either by stipulation or Order of the Court.

4. The Order granting the Certificate of Reasonable Doubt is dated January 29th, 1965.

5. The defendant-appellant is still admitted to bail pursuant to said Certificate of Reasonable Doubt.

6. The appeal herein was dismissed pursuant to Rule III of the Rules of this Court by Order of the Court dated June 7th , 1965.

It is respectfully submitted that the appeal herein was not perfected within the statutory one hundred twenty (120) days as provided for by the rules of this Court, through the inadvertance of counsel, who is presently actually engaged in a first degree murder trial involving six defendants in Part 32 of the Supreme Court, New York County before the Hon. GERALD P. CULKIN; that this trial has been going on since the 15th day of March, 1965, and has involved Huntley hearings and a great deal of other aspects; that deponent is actually trial counsel for Daniel Hamm, one of the defendants in the said case, and much energy and time have been spent in connection with investigations, consultations with apsychiatrist and the interviewing of witnesses outside of trial hours, that in addition to this, deponent has attempted to keep up with his practice, which invokes other Court appearances and paper work, in connection with said cases, despite deponent's efforts to keep abreast of his work, he has fallen behind, and his pre-occupation with the aforesaid homicide case together with other matters, deponent did not realize that the time to perfect this appeal had slipped by until he received a notice for the said defendant to surrender and begin the execution of the aforesaid sentence.

It is further respectfully submitted that deponent verily believes that the defendant has a good and meritorious appeal in that a motion for a new trial was made after a discovery by deponent that the arresting officer had given false testimony at the trial; a true copy of said motion papers is attached hereto and made a part hereof.

The said motion was denied, and deponent verily believes that the trial court committed error in not permitting a new trial, or at least taking testimony in connection with the motion.

No previous application has been made for the relief sought herein.

WHEREFORE, deponent respectfully prays for an Order vacating the Order of this Court dated the 7th day of June, 1965, dismissing defendant's appeal, reinstating said appeal and granting defendant an enlargement of time to perfect his appeal, and further staying all proceedings in the Criminal Court of the City of New York affecting the defendant herein pending a determination on this motion, and for such other, further and different relief as to this Court may seem just and proper.

Nathan H. Mitchell

Sworn to before me this

12th day of July, 1965.

Abe Schantz
Notary Public - State of N.Y.
#24-8857075 - Comm. exp Mar. 31, 1969

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: PART 8-A

----------------------------------X

THE PEOPLE OF THE STATE OF NEW YORK, :

-against- :

MELVIN ROBERTS *and* :
CORNELL GORE, :

Defendants. :

----------------------------------X

SIR:

PLEASE TAKE NOTICE, *that upon the annexed affidavit of* NATHAN H. MITCHELL, *duly sworn to the 9th day of November, 1964, and upon all the papers and proceedings heretofore had herein, the undersigned will move this Court at a Stated Term Part 8-A located at 100 Centre Street, New York, New York, on the 12th day of November, 1964, at 9:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an Order pursuant to Section 465 of the Code of Criminal Procedure, granting defendants a new trial, and for such other, further and different relief as to this Court may seem just and proper.*

Dated: New York, November 10, 1964.

Yours, etc.,

NATHAN H. MITCHELL
Attorney for Defendants
Office & P.O. Address
225 Broadway
Borough of Manhattan
City of New York

TO:

FRANK S. HOGAN
District Attorney, New York County
155 Leonard Street
New York, New York

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK:

PART 8-A
---------------------------------X

THE PEOPLE OF THE STATE OF NEW YORK

-against-

MELVIN ROBERTS and
CORNELL GORE,

Defendants.

---------------------------------X

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

NATHAN H. MITCHELL, being duly sworn, deposes and says:

That he is the attorney for the above named defendants herein, and makes this affidavit in support of a motion for an Order pursuant to Section 465 of the Code of Criminal Procedure granting the defendants herein a new trial.

Deponent respectfully submits that heretofore and on or about the 16th day of October, 1964, the above named defendants proceeded to trial in this Court along with a co-defendant JAMES JACKSON, after trial the said JAMES JACKSON was acquitted and the two above named defendants were convicted.

Upon the trial Officer Nelson testified that he had observed the defendant GORE place slips of paper under a box on the second floor hallway; he further testified that he was on the third floor landing looking down on defendant GORE, and had entered premises 2433 8th Avenue(the premises in question) from the roof, and had come from an adjoining building.

Deponent respectfully submits that on the 8th day of November, 1964, he had conversation with a person who resides in premises 2433 8th Avenue, and resided in same on August 7, 1964, the date of the arrest of the defendants, deponent is informed by said person, who has asked that his name be withheld for the time being, that he is willing to make a personal appearance before the Court and testify that on August 7th, 1964 and prior thereto the door leading from the roof of premises 2433 8th Avenue, had been barred to prevent narcotic addicts from going to the roof to use narcotics, and that it remained barred until sometime in September, 1964.

It is further respectfully submitted, that in the interest of justice an examination of this person should be made to inquire into the statement given deponent by this person, and grant deponent an opportunity to procure the minutes of the trial to submit to the Court.

Further it is respectfully requested that this motion be referred to Mr. Justice Balbach, a Judge of this Court, who presided over the trial on the 22nd day of October, 1964.

No previous application has been made for this relief.

Wherefore deponent respectfully prays for an order granting a new trial and for such other, further and different relief as to this Court may seem just and proper.

/Nathan H. Mitchell

Sworn to before me this
9th day of November, 1964.
Jurat.

TATE OF NEW YORK
COURT OF APPEALS
..................................x

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,

-against-

HERBERT CALLENDER,

Defendant-Appellant.

..................................x

SIRS:

PLEASE TAKE NOTICE, that the defendant hereby appels to the Court of Appeals from the judgment of the Appellate Term of the Supreme Court, for the First Department, dated on or about January 20, 1966 affirming the judgment of conviction rendered against him in the Criminal Court of the City of New York, County of New York, on the 13th Day of January, 1965, and from each and every part thereof, including orders denying the defendant's motions for a new trial and in errest of judgment, and all other and intermediate orders made herein.

PLEASE TAKE FURTHER NOTICE, that this appeal is taken pursuant to leave granted by Hon. Stanley H. Fuld, a Judge of the Court of Appeals, on February 9, 1966, in which it was certified that there are questions of law involved which ought to be reviewed by the Court of Appeals.

Dated: February 23, 1966

Yours, etc.,

Carl Rachlin, Esq.
38 Park Row
New York, New York 10038

TO: Hon. Frank Hogan, Esq.
District Attorney, New
York County
155 Leonard Street
New York, New York

Clerk of the Criminal Court,
City of New York

At an Appellate Term of the Supreme Court, First Department, held at the County Court House, Borough of Manhattan, City of New York, on the 20th *day of* January *196*6

Present:–Hon. SAMUEL M. GOLD, *J.P.*

" " LOUIS J. CAPOZZOLI

" " SAMUEL H. HOFSTADTER (dissenting) *Justices*

FILED
JAN 20 196
APPELLATE TERM

THE PEOPLE OF THE STATE OF NEW YORK

Respondent,

vs.

HERBERT CALLENDER,
Defendant-**Appellant**

Nov. #422

An appeal having been taken to this court by defendant from a judgment of conviction of the Criminal Court of the City of New York, County of New York, after trial before Hon. Mitchell J. Sherwin, on the 25th day of November 1964, upon the charge of violation 722, subs. 1,2, and 3 of the Penal Law, and having been sentenced by Hon. Louis . Cioffi on the 13th day of January, 1965, as follows:

[illegible]0 days in the Workhouse

and the said appeal having been heard and due deliberation having been had thereon,

IT IS ORDERED AND ADJUDGED that the said judgment so appealed from be and the same is hereby affirmed.

Enter

Justice Appellate Term
Supreme Court, First Department

Dissenting Memorandum

People v. Callender November No. 422

HOFSTADTER, J.:

For the reasons stated in my dissenting opinion in People v. Penn et al., February, 1964, #45, 152 N.Y.L.J. 76, October 16, 1964, p. 16, affd. 16 N.Y. 581, motion to amend remittitur granted September 27, 1965, and in my dissenting memorandum in People v. Turner et al., May 1965, #145, 154 N.Y.L.J. 93, November 15, 1965, p. 16, , my view is that defendant's acts were constitutionally protected and did not constitute disorderly conduct within the purview of Penal Law, Section 722 constitutionally delimited. I therefore dissent and vote to reverse the conviction on the law and on the facts and to dismiss the complaint.

Nov/65

Appellate Term of the Supreme Court, First Department, NOVEMBER, 1965

Present:—HON. SAMUEL M. GOLD, J.P.

" LOUIS J. CAPOZZOLI,

" SAMUEL H. HOFSTADTER,

Justices.

FILED
JAN 20 6
APPELLATE TERM

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,

vs.

HERBERT CALLENDER,
Defendant-Appellant.

No. 422

Appeal by defendant from a judgment of conviction of the Criminal Court of the City of New York, County of New York, after trial, of violating section 722, subdivisions 1, 2 and 3 of the Penal Law [disorderly conduct].

PER CURIAM:

Judgment of conviction affirmed.

I concur

I concur

I ~~concur~~ dissent and vote to reverse the conviction
and to dismiss the complaint
on a Dissenting Memorandum

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Statement of facts

Argument:

Point I. The conviction of Defendant Callender for his conduct inside the Council Chamber was against the weight of the evidence, a misinterpretation of NJSA ~~170x~~ (1952) Chap. 2a:170-28 and a violation of his constitutional rights.

- A. An analysis of the statute indicates that it ~~was~~ ~~incorrect~~ does not cover Callender's conduct.
  1. In the context of the meeting, Callender's acts were not sufficiently consequential to merit punishment.
  2. Traditional rules of statutory construction indicate that NJSA (1952) Chap. 2a:170-28 was not intended to make the defendant's acts punishable.
  3. According to the custom and usage governing ~~such~~ political meetings Callender committed no crime.
- ~~B.~~ B. NJSA (1952) Chap. 2a:170-28 on its face and as applied is unconstitutional.
  1. On its face
  2. As applied

Point II. The conviction of the defendants under NJSA (1952) Chap ~~170~~ 2a:170-29 (2) (b) was against the evidence and the law.

- A. Conviction of Defendant Callender for remaining ~~was wrong because~~ where the police placed him was wrong. ~~he was in the custody of the police and was seated where he was placed~~

B. The conviction of the other defendants was against the weight of the evidence, the terms of the statute, and the Constitution of the United States.

1. The weight of the evidence
2. The meaning of the statute
3. The constitutionality of the statute
    a. On its face
    b. As applied

Conclusion

COURT OF APPEALS
STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK

Respondent,

- against -

HERBERT CALLENDER
Defendant-Appellant

RECORD ON APPEAL

From the Appellate Term, First Department, of the
Supreme Court of the State of New York

William S. Ellis, Esq.
41 East 42nd Street
New York, New York

Carl Rachlin, Esq.
38 Park Row
New York, New York 10038

Attorneys for Defendant-Appellant

Frank S. Hogan
District Attorney, New York County,
Attorney for Respondent
155 Leonard Street
New York, New York, 10013

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Stipulation Waiving Arraignment Minutes--------------------6

Trial Minutes--7-46

WITNESSES for PEOPLE	Direct	Cross	Re-Direct
Sargent Burke	P. 10-17	P. 17-24	
Lieutenant Delehanty	P. 24-27	P. 27-31	
WITNESSES for DEFENDANT	**Direct**	**Cross**	**Re-Direct**
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STATEMENT PURSUANT TO RULE 5531 of C.P.L.R.

1. The Docket Number in the Court below is C 14246/1964.

2. The names of the parties are THE PEOPLE OF THE STATE of NEW YORK vs. HERBERT CALLENDER.

3. The defendant was arrested on the 15th day of July, 1964 in the County of New York.

4. The action was commenced in Part 1C of the Criminal Court of the City of New York on the 15th day of July, 1964.

5. The defendant is charged with a Violation of Section 722, Subdivision 1, 2 and 3 of the Penal Law.

6. This appeal is taken from the Judgment of Conviction on the 25th day of November, 1964 by the Hon. Mitchell D. Schweitzer, and the sentence of sixty (60) days in the Work-house.

7. The appendix method is not being used.

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM: FIRST JUDICIAL DEPARTMENT

--X

THE PEOPLE OF THE STATE OF NEW YORK, :

Respondent, :

-against- :

:

HERBERT CALLENDER, :

Defendant-Appellant. :

--X

STATEMENT PURSUANT TO RULE 11 (2) (C) OF THE RULES OF THE APPELLATE TERM FOR THE FIRST JUDICIAL DEPARTMENT

The defendant was admitted to bail in the sum of One Thousand ($1,000.00) Dollars pursuant to a Certificate of Reasonable Doubt granted by the Hon. Mitchell D. Schweitzer, a Justice of the Supreme Court of the State of New York on the 13th day of January, 1965, and is still admitted to bail.

✓

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: PART 2A

-----------------------------------X

THE PEOPLE OF THE STATE OF NEW YORK, :

-against- :

:

HERBERT CALLENDER, :

Defendant. :

-----------------------------------X

SIR:

PLEASE TAKE NOTICE, that the above named defendant hereby appeals to the Appellate Term of the Supreme Court, First Judicial Department from his conviction of a violation of Section 722, Subdivision 1, 2 and 3 of the Penal Law on January 13th, 1965 and was sentenced to serve sixty (60) days in the Work-houseon the 13th day of January, 1965, in the Criminal Court of the City of New York, and said defendant appeals from each and every part of said conviction and sentence.'

Dated: New York, N.Y., January 13th, 1965.

Yours, etc.,

NATHAN H. MITCHELL
Attorney for Defendant
Office & P.O. Address
225 Broadway
City of New York
Borough of Manhattan

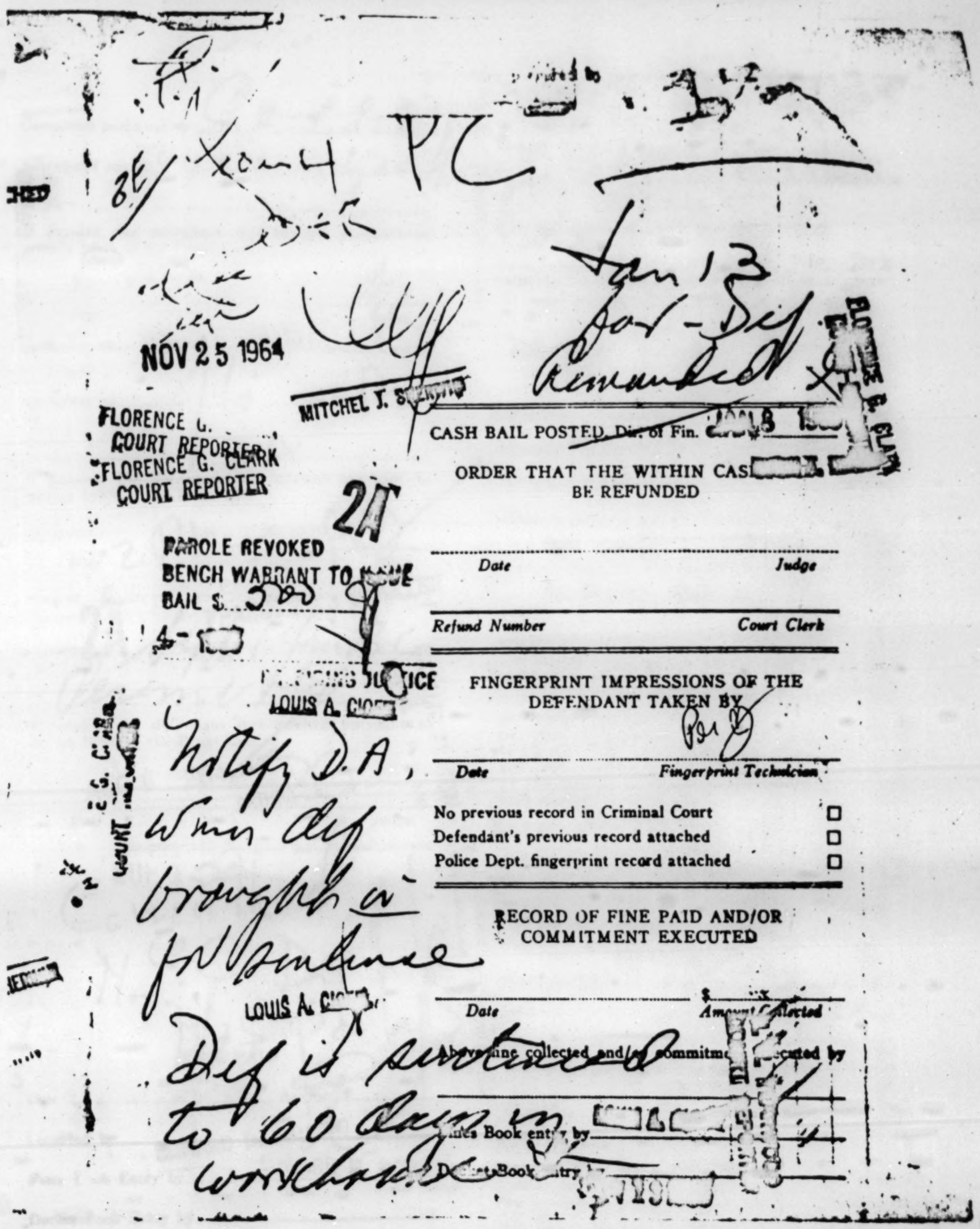
TO:

FRANK S. HOGAN
District Attorney-New York County
155 Leonard Street, New York, N.Y.

Defendant's Address
1301 Boston Road
Bronx, New York

SAME TITLE

CERTIFIED COPY OF COMPLAINT with ENDORSEMENTS



8E/ Xcom4 PC

Jan 13 for - Def Remanded

NOV 25 1964

MITCHEL J. S

FLORENCE G.
COURT REPORTER
FLORENCE G. CLARK
COURT REPORTER

2A

PAROLE REVOKED
BENCH WARRANT TO ISSUE
BAIL $ 500

4-1

PRESIDING JUSTICE
LOUIS A. CIO

Notify D.A. when def brought in for sentence

LOUIS A. CI

Def is sentenced to 60 days in workhouse

CASH BAIL POSTED ~~Dir. of Fin.~~

ORDER THAT THE WITHIN CASH
BE REFUNDED

Date Judge

Refund Number Court Clerk

FINGERPRINT IMPRESSIONS OF THE
DEFENDANT TAKEN BY

Date Fingerprint Technician

No previous record in Criminal Court ☐
Defendant's previous record attached ☐
Police Dept. fingerprint record attached ☐

RECORD OF FINE PAID AND/OR
COMMITMENT EXECUTED

Date $ Amount Collected

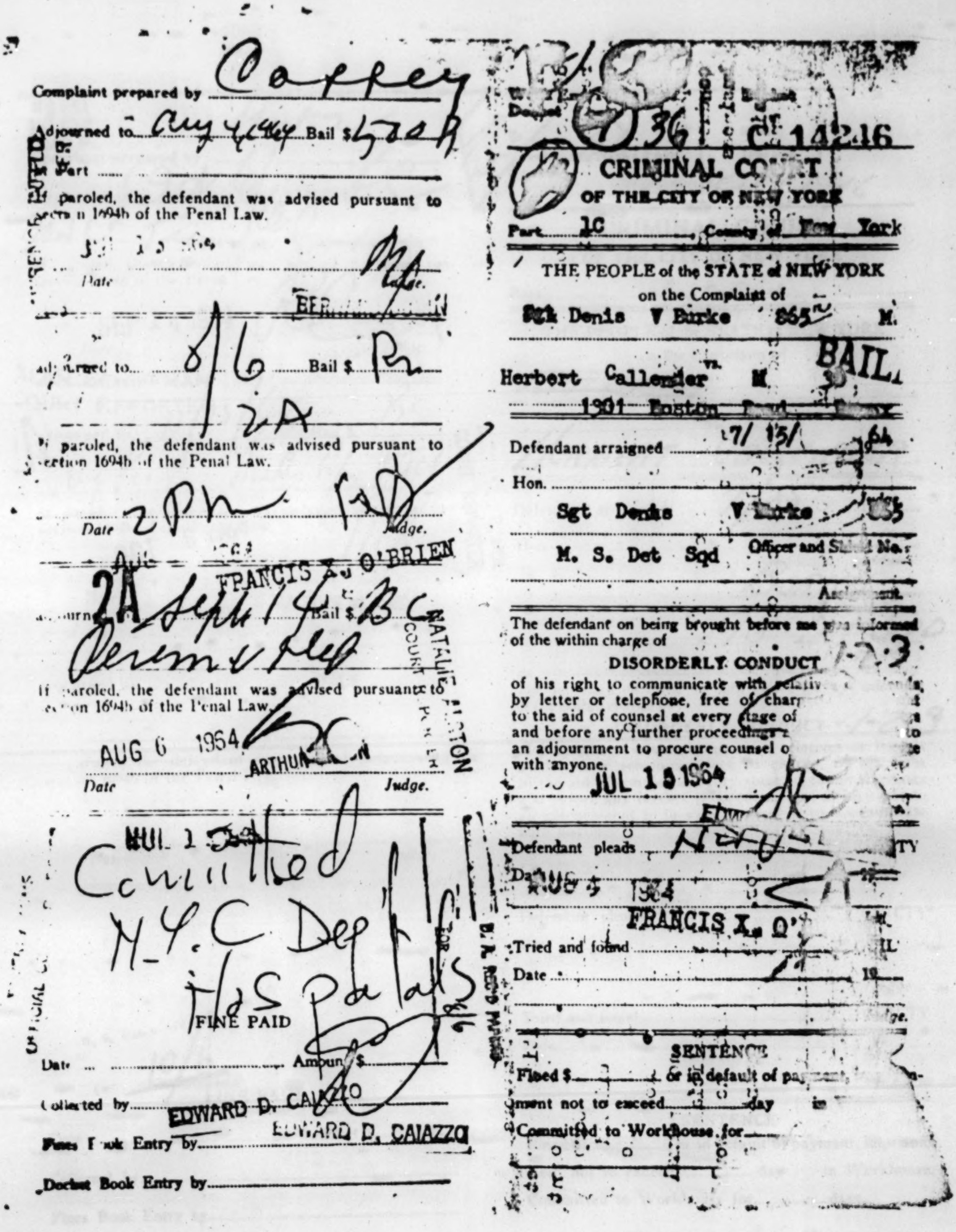
Above fine collected and/or commitment executed by

Minutes Book entry by

Docket Book entry by

SAME TITLE

CERTIFIED COPY OF COMPLAINT *with* ENDORSEMENTS



Complaint prepared by Coffey

Adjourned to Aug 4 1964 Bail $ 500 R

Part

If paroled, the defendant was advised pursuant to section 1694b of the Penal Law.

JUL 15 1964

Date

Judge.

BER[illegible]N

Adjourned to 8/6 Bail $ R

2A

If paroled, the defendant was advised pursuant to section 1694b of the Penal Law.

2 PM

Date

Judge.

AUG 1964

FRANCIS X. O'BRIEN

Adjourned 2A Sept 14 Bail $ B C

Decision & plea

If paroled, the defendant was advised pursuant to section 1694b of the Penal Law.

AUG 6 1964

ARTHUR [illegible]N

Date

Judge.

NATALIE ALSTON COURT REPORTER

AUG 1 1964

Committed N.Y.C. Dep't Hosp

FOR

FINE PAID

Date

Amount $

Collected by EDWARD D. CAIAZZO

EDWARD D. CAIAZZO

Fines Book Entry by

Docket Book Entry by

OFFICIAL

Docket 36 C 14216

CRIMINAL COURT
OF THE CITY OF NEW YORK

Part 1C, County of New York

THE PEOPLE of the STATE of NEW YORK
on the Complaint of

Sgt Denis V Burke 865 M.

BAIL

vs.

Herbert Callender M.

1901 Boston Road Bronx

Defendant arraigned 7/15/1964

Hon.

Sgt Denis V Burke 865

M. S. Det Sqd

Officer and Shield No.

Assignment.

The defendant on being brought before me was informed of the within charge of

DISORDERLY CONDUCT 1-2-3

of his right to communicate with relatives or friends, by letter or telephone, free of charge, and to the aid of counsel at every stage of the proceedings and before any further proceedings and to an adjournment to procure counsel or to communicate with anyone.

JUL 15 1964

EDW[illegible]

Defendant pleads Not Guilty

Date AUG 5 1964

FRANCIS X. O'[illegible]

Tried and found

Date 19

Judge.

SENTENCE

Fined $ or in default of payment, imprisonment not to exceed day in

Committed to Workhouse for

SAME TITLE

CERTIFIED COPY OF COMPLAINT *with* ENDORSEMENTS

2A

Complaint prepared by ....

Adjourned to Oct 6 Bail $ BC

Transfer

If paroled, the defendant was advised pursuant to section 1694b of the Penal Law.

SEP 14 1964 R. C. REUBEN LEVY

Date Judge.

ALAN SCHIFFMAN
COURT REPORTER

Adjourned to 11/13/64 Bail $ BC

If paroled, the defendant was advised pursuant to section 1694b of the Penal Law.

OCT 6 1964

Date MAURICE W. GREY Judge.

COURT REPORTER

Adjourned to .... Bail $..................

If paroled, the defendant was advised pursuant to section 1694b of the Penal Law.

Date Judge.

10/6

FINE PAID

Date .... Amount $..................

Collected by..................

Fines Book Entry by..................

Docket Book Entry by..................

38

Week End/Night Part Docket

Docket C14246

CRIMINAL COURT
OF THE CITY OF NEW YORK

Part.................., County of..................

THE PEOPLE of the STATE of NEW YORK
on the Complaint of

~~[illegible]~~

vs.

HERBERT CALLENDER

Defendant arraigned 7/15 19..........

Hon. ....
Judge.

BURKE
Officer and Shield No.

MO - DET. 520
Assignment.

The defendant on being brought before me was informed of the within charge of

DISORDERLY CONDUCT -1-2-3

of his right to communicate with relatives or friends by letter or telephone, free of charge, of his right to the aid of counsel at every stage of the proceedings and before any further proceedings and of his right to an adjournment to procure counsel or to communicate with anyone.

....
Judge

Defendant pleads ....GUILTY

Date ...., 19..........

....
Judge

Tried and found ....GUILTY

Date ...., 19..........

....
Judge.

SENTENCE

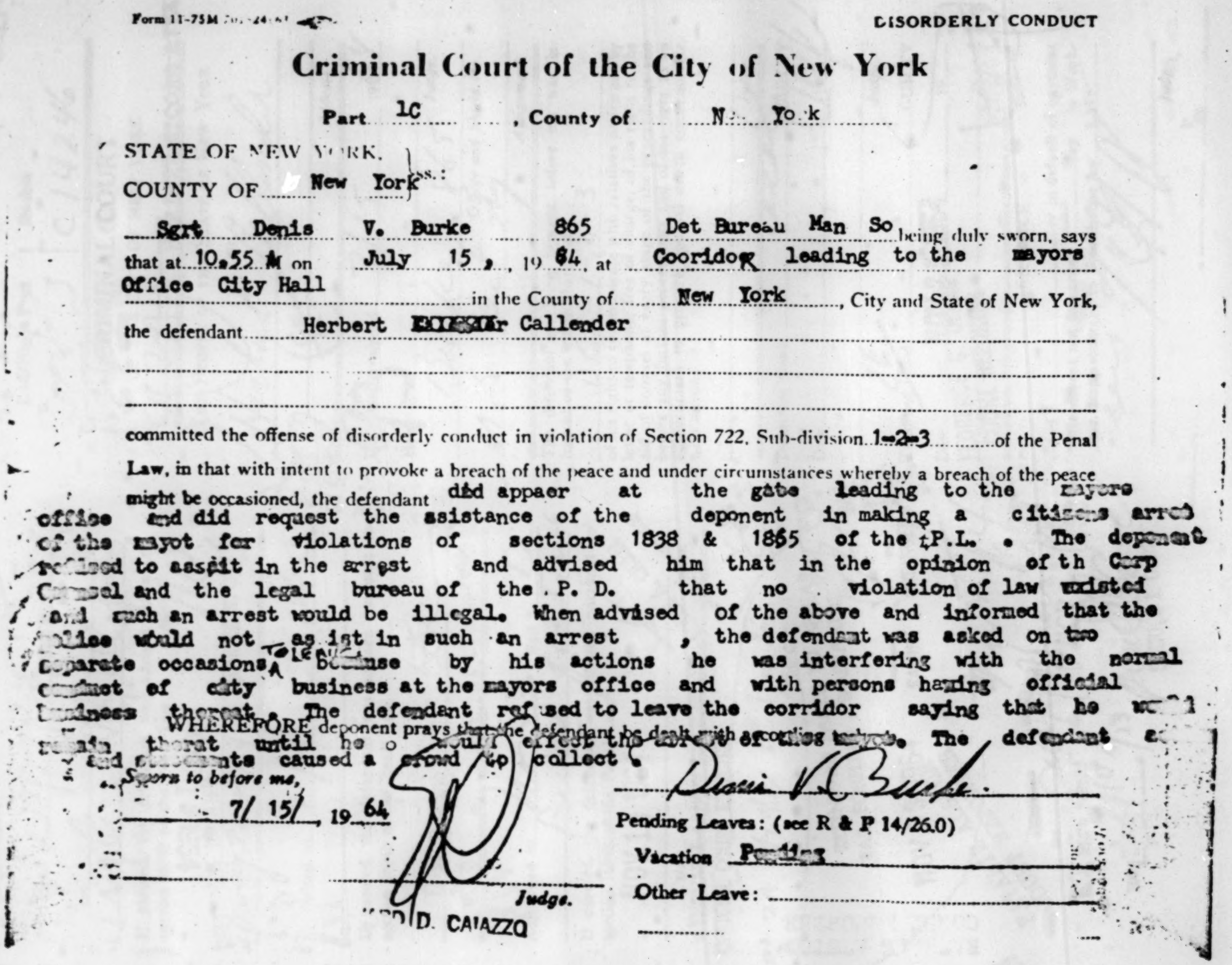
Fined $.................. or in default of payment, imprisonment not to exceed..................day in Workhouse.

Committed to Workhouse for..................days.

....
Judge.

SAME TITLE

CERTIFIED COPY OF COMPLAINT *with* ENDORSEMENTS



Form 11-75M

DISORDERLY CONDUCT

Criminal Court of the City of New York

Part 1C, County of N[illegible] York

STATE OF NEW YORK,
COUNTY OF New York ss.:

Sgrt Denis V. Burke 865 Det Bureau Man So being duly sworn, says that at 10.55 A on July 15, 1964, at Cooridor leading to the mayors Office City Hall in the County of New York, City and State of New York, the defendant Herbert [illegible] Callender

committed the offense of disorderly conduct in violation of Section 722, Sub-division 1-2-3 of the Penal Law, in that with intent to provoke a breach of the peace and under circumstances whereby a breach of the peace might be occasioned, the defendant did appaer at the gate leading to the mayors office and did request the asistance of the deponent in making a citizens arrest of the mayot for violations of sections 1838 & 1865 of the P.L. . The deponent refused to assit in the arrest and advised him that in the opinion of th Corp Counsel and the legal bureau of the P. D. that no violation of law existed and such an arrest would be illegal. When advised of the above and informed that the police would not assist in such an arrest , the defendant was asked on two separate occasions to leave because by his actions he was interfering with the normal conduct of city business at the mayors office and with persons having official business thereat. The defendant refused to leave the corridor saying that he would remain thereat until he [illegible] would arrest the [illegible] of thes [illegible]. The defendant ac[illegible] and statements caused a crowd to collect.

WHEREFORE deponent prays that the defendant be dealt with according to law.

Sworn to before me,
7/ 15/, 1964

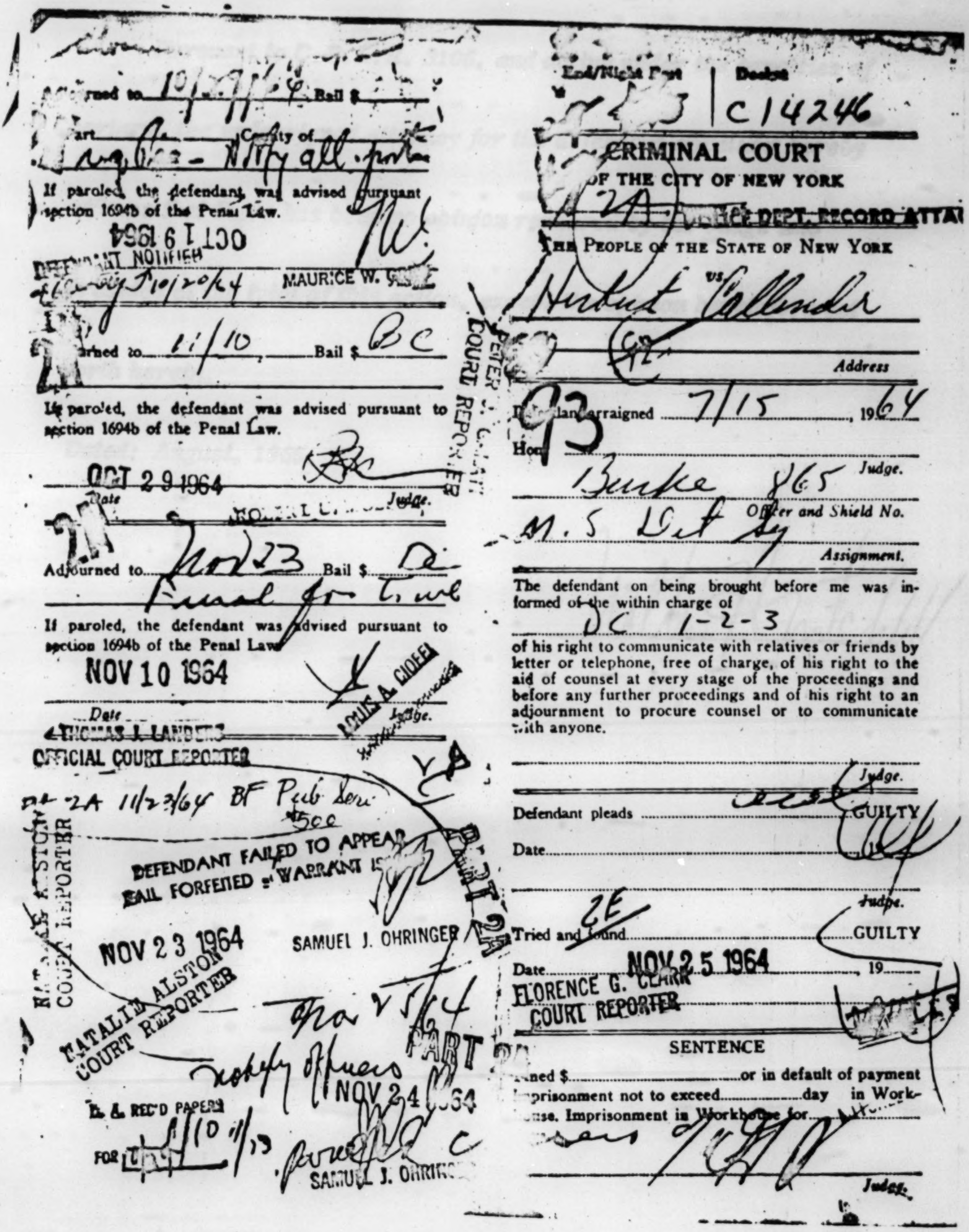
D. CAIAZZO
Judge.

Denis V. Burke

Pending Leaves: (see R & P 14/26.0)
Vacation Pending
Other Leave:

SAME TITLE

CERTIFIED COPY OF COMPLAINT with ENDORSEMENTS



Adjourned to 10/29/64 Bail $

Part County of

Arg Cor - Notify all parties

If paroled, the defendant was advised pursuant section 1694b of the Penal Law.

OCT 19 1964

DEFENDANT NOTIFIED

10/20/64

MAURICE W. [illegible]

Adjourned to 11/10 Bail $ BC

If paroled, the defendant was advised pursuant to section 1694b of the Penal Law.

OCT 29 1964

Date Judge.

2A

Adjourned to Nov 23 Bail $ Di

Final for Trial

If paroled, the defendant was advised pursuant to section 1694b of the Penal Law

NOV 10 1964

Date Judge.

LOUIS A. CIOFFI

THOMAS J. LANDERS

OFFICIAL COURT REPORTER

2A 11/23/64 BF Pub Serv $500

DEFENDANT FAILED TO APPEAR

BAIL FORFEITED WARRANT IS

NATALIE ALSTON

COURT REPORTER

NOV 23 1964

SAMUEL J. OHRINGER

PART 2A

Nov 25/64

Notify officers

PART 2A

NOV 24 1964

E. & REC'D PAPERS

FOR 11/10 11/13

SAMUEL J. OHRINGER

PETER J. [illegible]

COURT REPORTER

End/Night Part | Docket
2A | C14246

CRIMINAL COURT

OF THE CITY OF NEW YORK

2A

POLICE DEPT. RECORD ATTA

THE PEOPLE OF THE STATE OF NEW YORK

vs.

Herbert Callender

Address

Defendant arraigned 7/15, 1964

93

Hon. Judge.

Burke 865

Officer and Shield No.

N. S. Det Sq

Assignment.

The defendant on being brought before me was informed of the within charge of

DC 1-2-3

of his right to communicate with relatives or friends by letter or telephone, free of charge, of his right to the aid of counsel at every stage of the proceedings and before any further proceedings and of his right to an adjournment to procure counsel or to communicate with anyone.

Judge.

Defendant pleads NOT GUILTY

Date 19

Judge.

2E

Tried and found GUILTY

Date NOV 25 1964, 19

FLORENCE G. CLARK

COURT REPORTER

SENTENCE

Fined $ or in default of payment Imprisonment not to exceed day in Workhouse. Imprisonment in Workhouse for

Judge.

SAME TITLE

AFFIDAVIT OF NO OPINION

Pursuant to C.P.L.R. 3106, and acting under the penalties of perjury, the undersigned attorney for the defendant-appellant hereby affirms that there has been no opinion rendered by the Judge who presided at the trial of this action, except the opinion heretofore set forth herein.

Dated: August, 1965.

SAME TITLE

IT IS HEREBY STIPULATED AND AGREED by and between the attorney for the defendant-appellant and the District Attorney that the appeal in the above entitled action shall be limited to the proceedings had on the trial and sentence, and it is

FURTHER STIPULATED AND AGREED that the arraignment and/or adjournment minutes need not be reproduced since no error is assigned with respect to either or both, and that any question with respect thereto is waived. In the event the District Attorney deems it necessary, the arraignment and/or any adjournment minutes shall be included in the record, and it is

FURTHER STIPULATED AND AGREED that the exhibits, if any, need not be made part of the record but that the originals will be submitted to the appellate court on or before the call of the calendar.

Dated: August 17th, 1965.

Nathan H. Mitchell
Attorney for the defendant-appellant

F S Hogan By [illegible]
District Attorney

CRIMINAL COURT OF THE CITY OF NEW YORK
PART 2D: COUNTY OF NEW YORK
---X

THE PEOPLE OF THE STATE OF NEW YORK :
: ChargeSec. 722
: Subdivision 1,
-against- 2 & 3 of the
: Penal Law
HERBERT CALLENDER, Docket #014246
:
Defendant.
:
---X

TRIAL

Before: JUDGE MITCHELL J. SHERWIN

APPEARANCES:

MICHAEL METZGER
Assistant District Attorney
60 Centre Street
New York, New York
For the People

NATHAN H. MITCHELL
225 Broadway
New York, New York
For the Defendant.

COURT OFFICER: CAlendar #014246, HERBERT CALLINDER, Charge: Disorderly Conduct.

THE COURT: Counsellor, before we start, I would appreciate it if all the people in this case, outside of public officials, not have any decoration on.

DISTRICT ATTORNEY: I would like to make a motion at this time, that the affidavit in this case charges a violation of 722 Subdivision 1, 2, and 3. Now, as I understand the law of this State Your Honor if the People proof any subdivision it makes no difference what subdivision is charged. If your Honor is not in agreement, then I would ask that another subdivision be added to cover it.

NATHAN H. MITCHELL, ESQ.: It is my understanding that when I read it and as I interpreted it. When a person is charged with blanked disorderly conduct. If any subdivision has been made out and we are found guilty, but when we have been charged specifically with certain subdivisions----

THE COURT: Let's cut this portion short. If the People wish to proceed the way

COURT OFFICER: CAlendar #014246, HERBERT CALLINDER, Charge: Disorderly Conduct.

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THE COURT: Let's cut this portion short. If the People wish to proceed the way *it is now, they can proceed.*

NATHAN H. MITCHELL, ESQ.: Well I am opposed to amending it.

THE COURT: All right, lets proceed.

DISTRICT ATTORNEY: The people are ready.

THE COURT: If I agree with you before trial---------

DISTRICT ATTORNEY: That is quite all right.

THE COURT: Now, the defendant pleaded not guilty.

NATHAN H. MITCHELL, ESQ.: Not guilty and ready for trial.

THE COURT: Call your first witness.

SGT: BURKE, called as a witness for the People, being first duly sworn, testified as follows:

NATHAN MITCHELL, ESQ.: At this time I move that all witnesses be excused.

THE COURT: All witnesses excused until they are called to testify.

THE COURT: Now, we will proceed with the testimony of Sgt. Burke.

THE COURT: State your name and identification.

A Sgt. Dennis Burke. Shield Number 865. Detective, Borough of Manhattan South.

EXAMINATION BY DISTRICT ATTORNEY: MIKE METZGER.

Q Now, Sgt. Burke on July 15, of this year, you were on duty, were you not?

A I was.

Q You were in plain clothes ?

A I was.

Q You were assigned to the so called City Hall detail?

A That's correct.

Q Will you tell us what occurred on July 15th, in City Hall with respect to the defendant Herbert Callinder?

A At about 10:50 a.m. on July 15th, 1964, the defendant Herbert Callinder appeared at the Police Gate leading to the Mayor's office at City Hall.

Q Before you continue, will you describe to the Court just where this gate is located and the general physical surroundings?

A If you were to enter City Hall, you would climb about 15 or 20 steps, walk across a park about thirty feet into the center of the building, that would be the midway between east and west of the building. If you proceed about twenty feet west you would enter a corridor.

THE COURT: You turn left or right when you say west?

SGT. BURKE: Left sir. You would enter a corridor approximately eight feet wide by about twelve feet long; that is up to the police gate, the corridor continues on inside.

Q Is there a reception desk?

A There is a police desk on the inside of the gate.

Q When people want to go through that gate what do they do?

NATHAN MITCHELL, ESQ.: Objection as to the form of the question.

THE COURT: Well, no I will sustain the objection.

THE COURT: Is there somebody at the gate officer?

A There are persons at the gate.

THE COURT: I mean an official?

A A Police officer.

THE COURT: That is what I meant. In order to gain entrance through that gate, do you have to havesome identification or personal business to go through the gate?

A You state your reason and who you want to see, to the police officer on duty at the gate.

Q On the other side of the gate what does one find?

A As you proceed through the gate you enter the confines of the corridor immediately to the left the Office of the Executive Secretary to the Mayor, another room is where the Clerical help maintains offices and the room used by the Legal Assistant to the Mayor. As you proceed straight ahead you would enter the room occupied by the Secretary of the Deputy Mayor, to the left of that a reception room going back to the room occupied by the Secretary of the Deputy Mayor. If you turn right you would enter the Mayor's waiting room, off that is the Deputy Mayors office. The office of the Secretary of the Mayor and several other assistants.

Q These are then the Executive Chambers beyond the gate and all the intended offices, is that right?

A Yes.

Q On July 15, tell us exactly what happened.

A Mr. Callinder presented himself at the gate at 10:50 a.m.

Q Was he alone?

A There were several people with Mr. Callinder at the time I observed him.

Q What happened when he came to the gate?

A I inquired as to what Mr. Callinder's business might be.

THE COURT: You were the officer at the gate?

A I was one of the officers. Mr. Callinder stated that he was there to effect the civilian arrest of the Mayor charges 1838 and 1865 of the Penal Law. He asked my assistance in making the arrest. I informed him that we have been advised by the Corporation Counsel and by the Legal Bureau of the Police Department and others that such arrest would be illegal and that I would refuse to assist him in making such an arrest.

Q You were saying that you have informed Mr. Callinder of the Corporation Counsel and the Legal Bureau of the Police Department advice?

A Yes. Then he said that I was really obliged to and if I refused to do so he wanted my name and badge and full identification.

Q You told him your identification?

A Yes.

Q Then what happened?

A Mr. Callinder then spoke into some tape recorders.

There were many cameramen, reporters and men with tape recorders there. Mr. Callinder spoke for their benefit or at least into the machine. I then told him that he was causing a crowd to collect and interferring with the normal business of City Hall, by preventing normal exits through the gate and I asked him to leave.

Q Now, did you know of your own knowledge what the schedule was with respect to the Executive Chambers?

A The Mayor was scheduled to sign some local legislation and also some announcement concerning a gift to Mt. Morris Park.

Q Would you describe Sgt. Burke for the Court the conditions with respect to people at that time that you told Mr. Callinder the first time that he was causing a crowd to collect?

NATHAN H. MITCHELL, ESQ: Objection

THE COURT: Overruled.

Q At the time you told Mr. Callinder that he was causing a crowd to collect--------

NATHAN H. MITCHELL, ESQ: He told him that there was causing a crowd to collect.

THE COURT: Well, what did you say Mr. Callinder?

HERBERT CALLINDER: After I informed him of what I wanted and he would not assist in the arrest. I told him by his actions he was causing a crowd to collect. He was preventing the normal entrance and exit through that gate and that was about it. I asked him to leave.

Q At the time that you made this statement to Mr. Callinder with regard to his actions causing a crowd to collect and asked him to leave. Would you describe to the Court just what the condition was.

A In the corridor approximately eight by twelve feet, there were I would say thirty persons scattered in that area.

Q Did you see any of the people that were scheduled to have appointments in the Executive Office?

A I did not look to identify those that were there. I was busy with Mr. Callinder.

Q Was there any access to the gate from the outside at that time?

A No normal or easy access.

NATHAN H. MITCHELL, ESQ: Objection.

THE COURT: Sustained.

A Through the congregation of persons it is possible that you could fit.

NATHAN H. MITCHELL, ESQ.: Objection I move that that be stricken.

THE COURT: Was there room for people

who had official business to come in through that entrance gate at the time of this incident when you told Mr. Callinder to leave?

A Not with pushing people aside.

NATHAN H. MITCHELL, ESQ: Objection. Move that that be stricken.

THE COURT: I will allow it.

Q Did you know of your own knowledge where the scheduled appointments were held that morning?

A I do not.

Q Was Lt. Delehanty with you?

A Lt. Delehanty was in the vicinity.

Q Now getting back to the event of the day, you told Mr. Callinder to leave, at that time, what if anything did he say to you?

A He ignored my request at that time. He spoke to reporters and spoke to other persons of that kind, and asked Lt. Delehanty to assist him in making the arrest of the mayor.

Q Will you describe the part that you heard.

A Mr. Callinder approached Lt. Delehanty, asked who he was. He told him his purpose and asked his assistance in making the arrest of the mayor.

Q Then what happened?

A I was otherwise occupied. I don't know what

Lt. Delehanty's response was to him, by that time the crowd had grown some what larger. I then approached him and told him he was definitely.....because of the crowd that collected. He obstructed the entrance to the hall and inter fered with the Mayor's business and asked that he leave.

Q What reply did he make if any?

A He stated that he would remain there until he would make the arrest of the Mayor, for the purpose he had stated earlier.

Q Then what happened?

A I informed Mr. Callinder that if he refused to move on, he then refused. I told him he was under arrest. I asked him to accompany me to the station house, which he did.

Q Would you estimate or tell the Court Sgt. Burke what your estimate is of the people that had colle cted by this eight by twelve area during these proceedings?

A Thirty.

DISTRICT ATTORNEY: YOUR WITNESS.

NATHAN MITCHELL, ESQ. TO SGT. BURKE:

Q Now, Sgt. Burke, did you ever, at any time hear the Mayor of New York say that he had waited for Mr. Callinder, but Mr. Callinder was busy talking to reporters, and evidently did not see him.

Did you ever hear that-----------------------------

Statement?

A No.

Q You are certain about that?

A No.

Q Now, you say you first saw Mr. Callinder at approximately 10:50 a.m.?

A Yes.

Q At that particular time you say he had come into the open' area way?

A I had seen Mr. Callinder previous to that, I saw him on the sidewalk as I arrived with the Mayor.

Q Then there came a time that you saw him inside of the building?

A Yes.

Q And this particular area way immediatlly inside the door is approximately 30 feet by 40 feet?

A Yes. By 30 or by 50, I would say.

Q Now, leading to the Executive Office there is a smaller corridor, is that correct?

A Yes.

Q Is it a fair statement to say that this corridor is interrupted or cut off by the gate, then by a desk occupied by a member of the Police Department?

A It is .

Q Beyond that the various officers, is that correct?

A Yes.

Q When you first had the conversation with Mr. Callinder where was he standing?

A On the outside of the gate.

Q How wide did you say this gate is?

A The gate is approximately three feet/. However, there is a railing about two feet.

Q Is it roughly eight feet.

A Yes.

Q Now, at the time you had the first conversation with Mr. Callinder, is it your testimony that there were other people there in connection with this gift to Mt. Morris Park?

A It is my recollection.

Q Were there other people there in connection with official business with the Mayor of the City of New York, in connection with Mt. Morris Park?

THE COUR T: If you know.

A I don't know.

Q Did you ever hear that there were other people in connection with the gift to Mt. Morris Park?

A I did.

Q Are you normally on duty there?

A Yes.

Q Is it a fair statement that there were more people because of the signing of this legislation and in connection with this particular gift than there is normally when there are no official duties by the Mayor?

MIKE METZGER: I am going to have to object to that "are there more people there than usual"

THE COURT: Were there more people there than usual?

A In that corridor, yes.

Q Now, you said there came a time that you had this conversation with Mr. Callinder and he asked you to enable him to effect civil arrest, citizens arrest on the Mayor?

A He asked me to assist him.

Q You told him that you had an opinion by the Corporation Counsel that such an arrest was not legal?

A That's right.

Q Now, during this particular time where were these people who you say were in the corridor; where were they?

A Immediately in back of Mr. Callinder to his side.

Q Now, at that particular time, were there any of these people who made statements to you with respect ------------------

to being unable to get inside of the gate?

A *No.*

Q *Do you have any person heretoday who will come forward and testify (withdrawn)*

Do you have any person here who was annoyed or obstructed or disturbed by this defendant?

DISTRICT ATTORNEY: Objection: that is not any sort of a question.

THE COURT: I will sustain the form of the question.

Did anyone make any complaint to you officer, that they couldn't get in?

A *No, sir.*

Q *Did you at any time see any one attempt to get in?*

A *I would be unable to interpret the persons actions as to whether they would be able to get in or not.*

THE COURT: How wide was the area that leads directly into the corridor through the gate?

A *The corridor I speak of is approximately eight feet wide by about 12 feet in length. I believe the District Attorney asked you what would be the maximum people you would estimate to be there, I believe you said thirty?*

A *About thirty.*

THE COURT: Could you tell, or do you remember whether or noth they were spread across the entire width?

A They werefour or five people across and about six deep.

THE COURT: How many would normally be able to walk through there without having to jostle. I mean push people aside. Would four people be able to walk down that area?

A We don't usually have any congestion. The person that approaches the gate...........

THE COURT: They identify themselves?

A Yes. If their purpose is legitimate they are permitted through.

THE COURT: That is the standard operating procedure?

A That's right.

THE COURT: That is, they identify themselves, you either call in to find out whether they are the person that had the appointment and then if they are you admit them?

A Yes, if they are messengers, clerical help or officials they come right through.

Q Did anyone person approach the gate and say that they had an appointment to get in.

DISTRICT ATTORNEY: I have to object to this.

THE COURT: He has already answered the question.

Q I will ask you this, is it your testimony that Mr. Callinder's presence there obstructed people from going into the gate?

A Yes.

Q But nevertheless is it a fair statement to say that no one approached the gate and asked to get in?

A They didnt ask me.

Q Did you have any knowledge whether they asked anybody else?

A I don't have that knowledge.

Q Did you hear anyone say I am trying to get in but I can't get through the crowd?

A No.

Q There was a certain ceremony with respect to this gift to Mt. Morris Park?

A That's right.

Q Do you know whether at that time that you were consulting with Mr. Callinder that this Mayor was ready to receive those people?

A No.

Q So you don't know whether those people were -------

able to enter or not?

A We wouldn't interfere in that. The Mayor gets in as early as convenient. They might go in a half hour or so ahead of time.

NATHAN H. MITCHELL, ESQ: I have no further questions.

DISTRICT ATTORNEY: I call Lt. Delehanty of the New York City Police.

Lt. Delehanty, called as a witness, being first duly sworn, testified as follows:

Q What is your name?

A Lt. John W. Delehanty.

Q Your assignment?

A Second Division. Temporarily assigned to patrol Borough Manhattan South.

Q Lt. Delehanty on the fifth day of July last, you were assigned to City Hall Detail in Manhattan?

A Yes.

Q Would you describe what you observed from approximately 10:50 in the morning thereafter?

A Mr. Callinder arrived at City Hall, with two other people and he wanted to make a Citizens Arrest.

NATHAN MITCHELL, ESQ: Objection as to what he wanted.

THE COURT: What did you see, Officer?

A Mr. Callinder arrived at the gate leading to the Mayor's office. He was asked by Sgt. Burke what is the nature of your business. He asked Sgt. Burke to assist him to make a citizens arrest upon the Mayor for violation of 1838 and 1865 of the Penal Law. Sgt. Burke advised him that he had received an opinion from the Corporation Counsel that such an arrest was illegal, no violation of the law existed. He asked Sgt. Burke again, will he assist him in making a citizens arrest. Sgt Burke refused and told him that the opinion of the Corporation Counsel was that no violation of the law existed. Therefore we do not assist in making an arrest. Mr. Callinder turned to me and asked me, if I was a police officer. I told him I was. He asked me my name, I told him I was Lt. John W. Delehanty. He asked me, if I would assist him to make an arrest upon the Mayor, a citizens arrest. I informed Mr. Callinder of an opinion received from the Corporation Counsel's office that the arrest would be illegal and that no violation of the law existed. He asked me the second time to assist him. I refused, at this time Sgt. Burke asked Mr. Callinder to leave the area leading to the Mayor's Office because he was causing a crowd to collect and interfering with the normal business of City Hall. He refused. I asked him to leave the corridor because he was interferring with the normal business. He still refused, and then Sgt.

Burke placed him under arrest. We escorted Mr. Callinder through the crowd and out of the rear entrance of City Hall and placed him into the patrol wagon.

Q Now, Lt. Delehanty would you describe (withdrawn) Will you tell the Court please, what the condition of the corridor of this area on the outside of the gate waslike prior to the time that Mr. Callinder arrived prior to this point with respect to people?

A People were arriving at City Hall that morning for the Mayor's scheduled calendar of a gift for Mr. Rogers from Mt. Morris Park and also local laws were to be signed, and a minimun wage law was to be signed.

Q Was the area way which has been described as being eight by twelve the area way leading up to the gate, what condition was that prior to the time that Mr. Callinder came, was it crowded or not crowded?

A It was not crowded.

Q After Mr. Callinder came, what happened?

A The crowd startedto collect when Mr. Callinder was requestingour assistance . A group of people that were there for the signing of the minimum wage law were being escorted upstairs to await the opening of the reception room where the Mayor was going to sign the local laws and minimum wage law.

Q In other words, they were supposed to go through the gate?

NATHAN H. MITCHELL, ESQ: Objection.

THE COURT: Sustained.

Q Where were they supposed to go?

A They were going to go through the gate when they finished with the acceptance of the gift for Mr. Rogers.

Q Did you see any one else that had appointments in the executive chambers at that time?

A I did notice the people coming from the opposite side the people who had normal business who had business in Mr. Screvane's office. The normal clerks and other people.

Q Were there any access from the gate to the outside hallways through these poeple?

A It was impossible to get through the crowd that was gathered around.

DISTRICT ATTORNEY: Your witness.

CROSS EXAMINATION BY NATHAN MITCHELL:

Q Is it your testimony that Mr. Callinder's presence at this particular time, interferred with orderly business of City Hall?

A Yes.

Q Will you describe in what manner you say his presence interferred with the orderly business of City Hall?

A By his refusal to leave the area in front of the gate to allow the people that wanted to attend the Mayors Reception Room for the Reception.

Q Did anyone complain that I am trying to get through to the Mayors Reception, or trying to get through to the Mayors Office to you?

A No, they did not.

Q Do you have any one here who was annoyed, disturbed or obstructed by Mr. Callinder's presence?

DISTRICT ATTORNEY: Objection.

THE COURT: Sustained.

Q Do you have any other witness to this incident, other than yourself and Sgt. Burke?

DISTRICT ATTORNEY: Objection.

THE COURT: Sustained.

Q Did you at any time hear anything from the office on the inside of the desk, say, there are people who are trying to get in but they can't?

A Not to my knowledge.

Q Now, you say there came a time when certain people who were interested in the ceremony with respect to the gift of Mt. Morris Park.........

A No sir.

Q What is your testimony, to who had gone upstairs?

A Most of the people in connection with the minimum wage law and the street changes.

Q It was their duty to go upstairs prior to going through the gate?

DISTRICT ATTORNEY: Objection.

THE COURT: Was it their duty?

A They were requesting to go up.

THE COURT: By who?

A By the patrolman at City Hall.

THE COURT: Would that be the normal procedure to tell them to wait up in that room?

A That would be, because there was something else going on in the Mayors Reception Room.

THE COURT: The Mayor was already being engaged in a transaction of official business at the time?

A To the best of my knowledge, so that nobody else could go in and the people who had to wait for him, went up to counsel chambers. He had ~~waited~~ to come down into the Reception room.

Q Did you at any time hear Mr. Callinder say anything to the waiting people that was abusive or offensive to them?

A No, I did not.

NATHAN MITCHELL, ESQ. I have no further questions.

DISTRICT ATTORNEY TO LT. DELEHANTY:

Q It was their duty to go upstairs prior to going through the gate?

DISTRICT ATTORNEY: Objection.

THE COURT: Was it their duty?

A They were requesting to go up.

THE COURT: By who?

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Q Did you at any time hear Mr. Callinder say anything to the waiting people that was abusive or offensive to them?

A No, I did not.

NATHAN MITCHELL, ESQ. I have no further questions.

DISTRICT ATTORNEY TO LT. DELEHANTY:

Q	Now, these other offices, besides those of the Mayor himself on the other side of the gate?
A	Yes.
Q	There are other various administrative assistants, is that right?
A	Yes.
Q	The People, specifically referring to the group that was interested in something to do with Mt. Morris Park, those people were to be brought through the gate when the Mayor himself was ready to see them, is that right?
A	To the best of my knowledge, yes.
Q	Would you estimate for the Court the maximum number of people in your estimation that gathered in this eight by twelve area during the time that Mr. Callinder was there?
A	Approximately forty or fifty people.
Q	Now, you say there was no access to the gate?
A	No, there was none.

DISTRICT ATTORNEY: You may step down.

NATHAN MITCHELL, ESQ: Just one further question.

Q	Lt. Delehanty, if Sgt. Burke testified that in his opinion there were approximately thirty people, would you say he was in error?

A Sgt. Burke was giving his opinion, I was asked to give my opinion.

THE COURT: IN your opinion, it was between forty and fifty?

A Yes.

THE COURT: Thank you.

NATHAN MITCHELL, ESQ: If the Court Pleases, the defendant respectfully moves for a dismissal of the Complaint with respect to each subdivision, one, two and three of Sec. 722 of the Penal Law, on the grounds that the People have failed to establish a primie facie case.

THE COURT: Motion denied.

NATHAN MITHCELL, ESQ:: The defendant will take the stand.

HERBERT CALLINDER, called as a witness, first being duly sworn testified as follows:

Q What is your name?

A Herbert Callinder.

Q Where do you live?

A 755 East 168th Street, Bronx

Q What is your business or occupation?

A I am a field Secretary for CORE.

Q Are you married?

A Yes.

Q Do you have children?

A Yes, I have a son.

Q Do you remember your arrest on July 15th, 1964?

A Yes, I do.

Q Tell the Court what transpired from the time that you went to City Hall until such time as you were placed under arrest.

A It was approximately ten o'clock, when I approached City Hall, and as I was walking up the steps there was a group of reporters outside who stopped me. They wanted to ask a number of questions, prior to my going inside, and I answered as many as I could. Then I said, well, I had business on the inside, I attempted to go inside. I was stopped at the time by Inspector "JACK" who identified himself to me and he stated to me I couldn't go inside of City Hall and then I began to explain to them that I had business there. He said, well as far as I know you don't have any business here and you are not supposed to go in. But then he relented, somehow and I went and I approached the gate. The gate that I believe leads to the Mayor's office. I saw Sgt. Burke there. I walked up to him, I think I said, hello Sgt. Burke, I began to explain my business. I explained to him that I was there to effect a citizens arrest of Mayor Wagner, *charging him with misappropriation of public funds, that the funds were being used for public projection supplying contractors and discriminated against Negroes and Puerto Ricans, that to focus this law, this is one of the means that we wanted to bring before the court--Mayor Wagner before the Court and let the issue be decided. He said that he could not--as far as he knows, I couldnt do that. I explained that I am asking his assistance as a police officer and he said, that he couldn't give me any assistance, that he had been informed by his Corporation Counsel that this was illegal, that I was attempting to involve myself and him, and that he couldn't assist in any way. I was standing directly in front of the gate that swings back and forth. I moved to the side, at this time, Sgt. Burke came out from behind the gate. I asked him----there "were or not" (shorthand notes)---by this time several reporters had come in and they hadput microphones in between our conversation. There was a radio microphone and also some television cameras, but we still talked and I asked him whether or not he was acquainted with the law in regards to a police officers duty to assist a citizen in a citizens arrest arrest. I asked him whether he was deciding or whether the Corporation Counsel was deciding the guilt of my charge. He said no. All I know is that the Corporation Counsel tells me that this is illegal and I can't go through with--------*

it. A few minutes later, Lt. Delehanty, well, I know he was standing to my right near the gate and just out side. I walked over to him and I asked him for his assistance, also explaining my purpose there, explaining my purpose there, explaining who I was, asking whether or not he would assist me in a citizens arrest. He stated that he couldn't do it, also stating that the Corporation Counsel advised him that this was illegal, that he could not participate. A few minutes later we were up against the wall, as a matter of fact of the corridor and we spoke there just those minutes. Sgt. Burke came out and walked up to me and asked me whether or not I was going to leave, and I said, well, first let me explain. I am not here to engage myself in any civil disobedience and I am not here to disrupt anything, but I am here to make a citizens arrest and I believe that is my right, and that I was willing to wait until that arrest could be effected when some police officer could assist me with it. I was willing to try to find at least one. He said well, if you don't leave I am going to put you under arrest. I asked him again, at this time whether or not he would assist me, and he said, all right you are under arrest.

THE COURT: What did you say to the officer when he said to you, if you don't leave I am going to place you under arrest?

A All I did, was again to ask him for his assistance in a citizens arrest.

NATHAN MITCHELL, ESQ: Is it a fair statement Mr. Callinder to say that your purpose there was a form of protest because of what you believed to be discrimination on a racial ground in the building and trade unions and public construction?

THE COURT: He has already testified that, that was his purpose.

DISTRICT ATTORNEY: May I inquire.

Q Mr. Callinder do you remember Sgt. Burke telling you that you were causing a crowd to collect and if you did not leave, you would be placed under arrest?

A No.

THE COURT: Would you say that he didn't say that?

A I would say that I don't recall him saying anything about a crowd because there was not that much of a crowd.

THE COURT: Do you remember him saying that, if you don't leave I will place you under arrest?

A Yes, he did say that.

Q Do you remember saying that you would not leave until you effected the arrest?

A What I did was just ask him again for his assistance.

Q How many people gathered around you in front of the gage at this time?

A Honestly I have no idea how many people gathered around me. There were two people that came down from Bronx Core, that is Mr. Waltell and Mr. Valentine.

THE COURT: You did see a number of people collect?

A Well, as I recall, there were a number of people in the corridor when you first walked in straight ahead. There were a number of pressmen there.

DISTRICT ATTORNEY: You had given out advanced information to newspapers?

A I believe a press releasewas issued, yes.

Q Mr. Callinder did you have any real belief that you were going to effectuate the arrest of Mayor Wagner when you went down to City Hall on the 15th of July?

NATHAN MITCHELL: Objection.

THE COURT: I will allow it.

Q Did you really think you would be able to arrest him?

A Yes, I did.

Q Is it a fair statement that you went down there

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NATHAN MITCHELL: Objection.

THE COURT: I will allow it.

Q Did you really think you would be able to arrest him?

A Yes, I did.

Q Is it a fair statement that you went down there to gain publicity and also to become a champion?

NATHAN MITCHELL, ESQ.: Objection. I am talking about the champion part.

Q Is that your cause you went down there to get as much publicity as possible for this cause that you were engaged in at the time?

A No, sir. I went down there to effect a citizens arrest , what we had hoped for was that the matter would be brought before the Court and that a decision could be rendered.

Q Had you made a prior attempt that was not successful?

A At some point earlier we had taken out a summons.

Q That summons was squashed was it not?

A When it was found out that the the judge had put......

NATHAN MITCHELL, ESQ: There is no such allegation anywhere.

THE COURT: If you know.

A Well, I don't know about the clerk, I know it was squashed in Court.

Q You knew that, at the time you went down to City Hall, on July 15th that you had been unsuccessful in the Court in obtaining this particular goal, that is the -------

the arrest of Mayor Wagner?

NATHAN MITCHELL, ESQ: I am going to object. It has nothing to do with whether or not he was disorderly on thisparticular case.

THE COURT: OVERRULED.

NATHAN MITCHELL, ESQ: Exception.

THE COURT: Did you seek any advice from any legal source before you went down to effect what you termed a citizens arrest?

A Yes. I was advised by attorneys that the matter of the citizens arrest was all right. It was something that we could engage in and we also made our position pretty clear that we were not engaged in civil disobedience of the law.

Q After you were told by Sgt. Burke and then by Lt. Delehanty that you would not be assisted in making this arrest did you intend to stay in front of the gate until such time as you could get assistance in making the arrest?

A No, I had intended to get another police officer or rather ask him if he would assist in the arrest. I was operating under the assumption that there must have been somebody who would try to see the law carried out.

Q You gave interviews while in the hallway to a news media both television and radio?

A *No, it was not exactly an interview. I didn't even know who it was.*

Q *You spoke into microphones, is that right?*

A *I think that the microphones were there in front of us as I was asking questons to Sgt. Burke.*

Q *You had hoped that there would be a good deal of newspapers.*

NATHAN MITCHELL, ESQ: Objection.

THE COURT: Sustained.

NATHAN MITCHELL, ESQ: It calls for an operation of the defendant's mind.

DISTRICT ATTORNEY: The operation of his mind is what is in ussue today.

THE COURT: I will make that determination based on the facts.

DISTRICT ATTORNEY: Well, I thought I could ask him what the operation of his mind was and get right to it.

Q *You did give out press releases with regard to events that would take place on July 15th?*

A *Right.*

Q *Did you feel that this would some way effect the arrest of him?*

A *We explained what our procedure was.*

DISTRICT ATTORNEY: Just answer the

question.

Q Did you think this would help you in giving out press releases?

A I don't think it was taken into consideration as to the citizens arrest.

Q Have you ever been convicted of a crime?

A Yes. I was convicted of sit-ins in the Police Department.

Q Do you remember the specific crime?

A Disorderly conduct.

THE COURT: That is no crime, that is an offense.

Q Any crime other than that?

A Unlawful assembly during the freedom rides in 1961.

THE COURT: What about here in Manhattan?

A No crimes that I know of, sir, outside of what I stated here.

Q Were you not convicted two days prior to the incident in this caseon July 13th of unlawful intrusion?

A Whatever the charges were connected with the sit-ins at Police Headquarters.

Q Now, after you were placed under arrestand taken to the patrol wagon your two associates...............

NATHAN MITCHELL, ESQ:, Objection. His associates have nothing to do withthi s trial.

DISTRICT ATTORNEY: Well, it is highly prejudicial.

THE COURT: You have no jury here.

Q After you were arrested did you tell any one else to continue on in the effort to arrest Mayor Wagner?

NATHAN MITCHELL, ESQ.: Objection.

THE COURT: I will allow it.

NATHAN MITCHELL, ESQ: It has nothing to do with whether or not he was disorderly.

THE COURT: I think it can show the state of mind the defendant had all the time.

Q Did you tell any one else to continue on?

A I don't recall.

DISTRICT ATTORNEY: I have no further questions.

NATHAN MITCHELL TO HERBERT CALLINDER:

Q At any time did you speak in a loud abusive language to any one in the area?

A No, I did not

Q At the time that you spoke to two people to go back to city Hall, did you tell them to act in a disorderly manner?

A I don't recall saying anything to them.

Q Did you at any time act in a disorderly manner yourself?

A No.

Q Did you see any one attempt to get through the gate when you were speaking to the police officers?

A No.

Q Did you hear any one say I would like to get through?

A No.

THE COURT: This is supposed to be re-direct. This has not been brought out on cross-examination.

NATHAN MITCHELL, ESQ: Very well, Your Honor I withdraw the objection. Just one further question. Mr. Metzger alluded to certain convictions-- well, if it is two convictions they arrived out of a single transaction at City Hall, isthat correct?

A That's correct.

THE COURT: Step down.

DISTRICT ATTORNEY: I have nothing further.

NATHAN MITCHELL, ESQ: Defendants case.

THE COURT: People rest?

DISTRICT ATTORNEY:: People rest.

NATHAN MITCHELL, ESQ: If Your Honor please, I respectfully submit that the People have failed, and failed miserably to prove defendant's guilt beyond a reasonable doubt, with respect to all three subdivisions, one two and three of Sec. 722 of the Penal Law, Disorderly Conduct.

There has been nothing by the officers testimony or any other evidence that the defendant used any offensive or abusive language or behaved in any manner toward any person as to bring him within the purview of subdivision one.

The testimony has failed to establish that his actions talking with the police officers indicated the desire to effect civil arrest or what have you. He didn't annoy any one, obstruct any one from going about orderly business that they had in City Hall.

Number three, with respect to being requested to move on it is clearly established that that section only applies when on a public street. We certainly can not construe the corridor of City Hall as being a public street within the purview of this particular subdivision.

There has been much talk about causing a crowd to collect around. Now that deals with subdivision four of 722 which he is not charged with subdivision four.

I would say again that as far as the New York State Statute, it requires the evidence of that strada of evidence that is required to convict under these three subdivisions and they have not been established. Assuming that any one of them had been established, the defendant has testified that this was a matter of protest which clearly falls within the purview of the First Amendment to the United States Constitution. It should not, even if it ran counter to our New York Statute in the absence of showing a clear and present danger to others. His activities should not be curtailed, because it was only a furtherance for him to protest that right granted to him by the First Amendment of the United States Constitution.

THE COURT: Motiondenied.

I find the defendant guilty. Guilty with respect to all three counts. I am finding the defendant guilty of disorderly conduct within the meaning of 722.

What date for sentencing?

NATHAN MITCHELL, ESQ: Jaunary 4th.

THE COURT: Have you ever been convicted of any crimes other than what you testified-----

to that you recall?

HERBERT CALLINDER: No sir.

THE COURT: How long have you lived in New York?

HERBERT CALLINDER: All my life just about.

THE COURT: THE DEfendant is on bail?

NATHAN MITCHELL, ESQ: He was paroled. Why is there any reason whatever that bail should not be continued or parole should not be continued?

DISTRICT ATTORNEY: I want to be very clear. The defendant was on bail he was not here on the 23rd , Monday.

NATHAN MITCHELL, ESQ. He appeared on the 24th voluntarily. I dont want you to get ficious.

THE COURT: There is nothing he can say that can be imputed to be ficious. I think that he has been very patient.

DISTRICT ATTORNEY: When Mr. Callinder voluntarily presented himself here on the 24th which was yesterday, his bail had been forfeited. While Mr. Mitchell anticipated a great fight, I made no objection to the defendant being paroled because I was sure that he was able to be here this morning.

THE COURT: I am going to parole the defendant. January 4th for sentencing. Officer and record.

****

I, FLORENCE CLARK certify that the within is a true and accurate copy of my stenographic notes.

FLORENCE CLARK, REPORTER

CRIMINAL COURT OF THE CITY OF NEW YORK
PART 2A: COUNTY OF NEW YORK

- x

PEOPLE OF THE STATE OF NEW YORK

-against-

HERBERT CALLENDER

Defendant

Docket No.: C14246

Charge: Dis. Cond. 1,2,3

- x

100 Centre Street
New York, New York
January 13, 1965

BEFORE:

HON. LOUIS A. CIOFFI

APPEARANCES:

MICHAEL METZGER, ESQ.
Assistant District Attorney
For The People

NATHAN H. MITCHELL, ESQ.
225 Broadway
New York, New York
Attorney for Defendant

GERALD RYAN, ESQ.
Assistant District Attorney
For The People

Thomas Revans
Court Officer

J. A. Yearwood, C.S.R.
Official Court Reporter

COURT OFFICER: 93, Herbert Callender.

MR. MITCHELL: Nathan H. Mitchell.

THE COURT: Is there any legal cause why sentence should not be imposed?

MR. MITCHELL: None, other than we take the position that the conviction is against the weight of the evidence, contrary to law, and of course, Your Honor would not be concerned with that.

THE COURT: That's not a legal cause. Are You? I didn't hear.

MR. MITCHELL: But Your Honor would not be concerned with looking into - in back of another Court's judgment.

THE COURT: I see. Is there any legal cause why sentence should not now be imposed?

MR. MITCHELL: Other than that, no.

THE COURT: You wish to be heard?

MR. MITCHELL: I do. I urge the Court to consider the nature of this particular conviction. It isn't the run of the mill disorderly conduct. It has no basic criminal propensities attached to it, so to speak. The entire matter arose out of certain discriminatory hiring practices in the building trades, in which money from the City of New York as well as

MR. MITCHELL: (cont'g) the State of New York was being poured into it. To indicate there was much merit in these allegations, District Attorney Hogan has seen fit recently to indict a union official, in connection with discriminatory practices in his union.

I would ask the Court, too, to consider the state of world conditions at this particular time. That people all over the world are fighting for freedom; African nations are emerging. There has been some type of unrest here; some type of unrest there. This is not the type of situation that I feel that the Court really should impose a jail sentence on, in connection with this man.

THE COURT: You wish to be heard?

MR. METZGER: Yes, Judge, one or two comments, with regard to the sentence in this case.

As Your Honor knows, the sociology of sentencing turns on the principle of rehabilitation and possible deterencein other cases. I would bring to Your Honor's attentin a couple of facts. That is on the 13th day of July, last, this defendant was convicted of three misdemeanors: unlawful intrusion upon real property; unlawful assembly; and the inter-

MR. METZGER: (cont'g) fering with the duties of a public officer, and he was sentenced in Part 2B of this Court on the 13th of July. He was given a 30 days suspended sentence, provided that his behavior was lawful thereafter. Two days later, less than 24 hours later, the defendant attempted to arrest the Mayor of this City, which formed the basis of this prosecution and conviction; in that he was disorderly at City Hall, in violationof the law. This was within 48 hours of having been given a suspended sentence. This is a case that could have amounted to three years incarceration on three separate counts. This, I think, Your Honor, shows that this defendant believes that the law does not apply to him; that a conviction with a suspended sentence is merely heads I win, tails you lose. He doesn't care if he gets arrested; wants to get arrested. He went down to City Hall, notified the newspapers, gave out press releases. His purpose is to get arrested. It's a willful, unlawful conduct, and I believe that the defendant stands here today completely unremorseful. I believe that this defendant says, "I am right and the Court may convict me as many times as it wants to. I am going to walk out on the

MR. METZGER: (cont'g) street and I'm right." There is no sense of guilt.

According to the theory of penology, Your Honor, it seems to me that theonly way that we can develop a sense of guilt in this defendant is to show him that willful, crimal misconduct must be paid for.

Now, I would just say, in closing, that Martin Luther King is a peacemaker in this country, and Your Honor well knows his attempts to right certain wrongs through lawful means, and he said in Washington last year, "in ofder to gain our rightful place, we should not commit wrongful deeds."

I believe that this defendant must be instructed, by the sentence of the Court, that he cannot commit wrongful deeds with impuñity. I ask that the Court impose a prison sentence of any term that the Court feels proper.

THE COURT: In reply to the defense counsel's statements, I should like to say that no matter how well your purpose a person is pursuing, that purpose or end must be gotten within legal processes. Where the legal process is completely disregarded or ignored anarchy reigns.

The situation in this prticular case, the

THE COURT: (cont'g) attempt to serve the Mayor of the City of New York is a deplorable one. Mayor Wagner is not only one of the greatest mayors New York City ever had, but he has stood out very, very prominently in all just causes. He has stood out prominently in the interest of minority groups and all groups who needed assistance. It's a very pathetic thing. I have served with Mayor Wagner, and I know what his mind is, and anybody who would even impugh his integrity or his purposes, even remotely, to me it's deplorable.

However, I note by the record that this case has been pending for an awful long time, and there were a number of warrants have been issued and ordered for this defendant to appear. Defendant has shown an arrogance, a callousness for legal processes which we cannot tolerate. I concur with the remarks of the District Attorney's office, and agree with him wholeheartedly, with Martin Luther King. The way to obtain our objectives is through peaceful, legal processes and not disorderly, illegal processes.

You wish to be heard further, Mr. Mitchell?

MR. MITCHELL: No, Judge, except I would

MR. MITCHELL: (cont'g) like to say this: When we have convictions in our hearts; when we actually believe what we are doing is right - and in this particular case, thisman had consulted a lawyer, not me, but he had consulted a lawyer, who advised him to have summonses issued, summonses had been issued, they were subsequently quashed, he was advised to make an arrest, based on that. He believed that he was right.

THE COURT: But Mr. Mitchell, can you not see that this defendant shows absolutely no remorse. Not only did hisarrogance take him to the office of a great mayor, who is completely in sympathy with the needs of all people, but he has completely - his arrogance compelled him to disregard the legal processes of this Court.

MR. MITCHELL: Well, he has been confused on one or two dates with respect to when he was - -

THE COURT: He was required to appear on a number of occasions and on a number of occasions he failed to come in, until a warrant was ordered for his arrest and he was brought in. I also have been advised, quite by coincidence, that he had another case pending in Part 2B, and the Judge in that Court

THE COURT: (cont'g) advised me that he had to order a warrant for his arrest again, and this is what indicates to the Court that he has no understanding - -

MR. MITCHELL: I attempted to explain before the Court last Friday that those warrants were vacated because the Court recognized that the Criminal Court had no jurisdiction in connection with those two matters. We have only had situation where a warrant was issued here, when the defendant actually should have been here, one particular instance. The case was in the Federal Court at that time. This Court had no jurisdiction.

THE COURT: This was last Friday, when he was brought before me, -

MR. MITCHELL: That's the only instance.

THE COURT: - - on a warrant.

MR. RYAN: May I make a statement? The warrants were issued in a case where the defendant was convicted for a crime at police headquarters; the case I tried. Warrants were issued in that case. Warrants were issued in the case on the assualt on a plumber, which is now in Federal Court. Warrants were issued for assault and disorderly conduct cases, MR. RYAN: (cont'g) demonstrations at City Hall.

THE COURT: I am aware of it, and it's this wanton disregard of legal processes that impels me to sentence this defendant to 60 days in the workhouse.

MR. MITCHELL: Very well, Your Honor.

* * *

The above is certified to be
a true and correct transcript
of the testimony.

J. A. Yearwood
J. A. Yearwood, C.S.R.
Official Court Reporter

SAME TITLE

ATTORNEY'S CERTIFICATION
(Pursuant to C.P.L.R. 2105)

The undersigned attorney for the defendant-appellant herein, hereby certifies that the foregoing record on appeal contains a copy of the Notice of Appeal, the information with all the endorsements thereon, the minutes of the trial and sentence and judgment roll in the action of the PEOPLE OF THE STATE OF NEW YORK *against* HERBERT CALLENDER, *convicted of a violation of Section* 722, 975 *Subdivision 1, 2 and 3 of the* Penal Law, *and said record has been compared by me with the original and it is a true copy of the transcript of the whole of such originals.*

Dated: August 17, *1965.*

Walter H Mitchell

SAME TITLE

ORDER SETTLING CASE

The foregoing case on appeal, containing all the evidence is hereby settled and ordered on file.

Dated: August , 1965.

Judge, Criminal Court

CLERK'S RETURN ON APPEAL

I, the undersigned Clerk of the Criminal Court of the City of New York, respectfully make return to the Appellate Term of the Supreme Court for the First Judicial Department and certify upon the affidavit of the appellant's attorney that there are attached hereto correct copies of the Notice of Appeal and papers required to be returned pursuant to the Code of Criminal Procedure and rules and regulations of the Appellate Term of the Supreme Court for the First Judicial Department.

IN WITNESS WHEREOF, I have set my hand and affixed the seal of the above court this day of August, 1965.

CLERK.

SAME TITLE

DEFENDANT'S CRIMINAL RECORD

SAME TITLE

DEFENDANT'S CRIMINAL RECORD

ADDITIONAL PAPERS ON APPEAL
TO
COURT OF APPEALS

ADDITIONAL PAPERS ON APPEAL
TO
COURT OF APPEALS

STATEMENT PURSUANT TO RULE 5531 CPLR

COURT OF APPEALS, STATE OF NEW YORK

---x

PEOPLE OF THE STATE OF NEW YORK, :
Respondent, :
-against- :
HERBERT CALLENDER, :
Defendant-Appellant. :

---x

1. The docket number of this case in the Criminal Court is C 14246/1964.

2. Defendant-appellant, HERBERT CALLENDER is represented by CARL RACHLIN and WILLIAM S. ELLIS, Esqs. Respondents, the People of the State of New York, are represented by FRANK S. HOGAN, Esq., District Attorney of New York County. No change in the parties has occurred.

3. The action was commenced in the New York City Criminal Court, County of New York.

4. The action was commenced by a criminal complaint, sworn to and filed on the fifteenth day of July, 1964, on which the defendant was arrested.

5. The complaint charged defendant with violation of Section 722, Subdivisions 1, 2 and 3 of the Penal Law. Defendant was tried and found guilty on November 25th, 1964 by the Hon. Mitchell J. Sherwin and was sentenced to sixty (60) days in the Work-house. Defendant Callender was released on a

Certificate of Reasonable Doubt.

6. This is an appeal by the defendant from an order of the Appelate Term of the Supreme Court of the State of New York, First Department, entered on or about January 21, 1966, affirming the conviction. Leave to appeal to the Court of Appeals was granted by Hon. Stanley H. Fuld, Associate Judge of the Court of Appeals, on February 9, 1966.

7. The appendix method is not being used on this appeal.

CERTIFICATE GRANTING LEAVE

STATE OF NEW YORK

COURT OF APPEALS

BEFORE: HON. STANLEY H. FULD, Associate Judge

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,

-against-

HERBERT CALLENDER,
Defendant-Appellant.

I, STANLEY H. FULD, Associate Judge of the Court of Appeals of the State of New York, do hereby certify that in the record and proceedings herein questions of law are involved which ought to be reviewed by the Court of Appeals and pursuant to 520 of the Code of Criminal Procedure permission is hereby granted to the above named appellant to appeal to the Court of Appeals.

I further certify that in my opinion there is reasonable doubt whether the judgment of conviction will stand upon appeal to the Court of Appeals.

Bail as at present provided is fixed pending appeal to the Court of Appeals in the sum of $1,000.

Dated at New York, New York
February 9, 1966

/S/ Stanley H. Fuld
Associate Judge

Notice: Within 15 days from the date hereon an appeal must be taken and this certificate must be filed with the notice of appeal An appeal is taken by filing in the clerk's office having

CERTIFICATE GRANTING LEAVE Cont'd.

judgment roll (trial court) a written notice in duplicate that appellant appeals to the Court of Appeals (522, Code Crim. Pro.) together with proof that another copy of notice of appeal has been served upon opposing counsel (521, Code Crim. Pro.). The appeal must be argued within 90 days from the date of the notice of appeal (536, Code Crim. Pro.)

NOTICE OF APPEAL TO COURT OF APPEALS --

STATE OF NEW YORK
COURT OF APPEALS
....x

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent

- against -

HERBERT CALENDER,
Defendant-Appellant.
....x

SIRS:

PLEASE TAKE NOTICE, that the defendant hereby appeals to the Court of Appeals from the judgment of the Appellate Term of the Supreme Court, for the First Department, dated on or about January 20, 1966 affirming the judgment of conviction rendered against him in the Criminal Court of the City of New York, County of New York, on the 13th Day of January, 1965, and from each and every part thereof, including orders denying the defendant's motions for a new trial and in arrest of judgment, and all other and intermediate orders made herein.

PLEASE TAKE FURTHER NOTICE, that this appeal is taken pursuant to leave granted by Hon. Stanley H. Fuld, a Judge of the Court of Appeals, on February 9, 1966, in which it was certified that there are questions of law involved which ought to be reviewed by the Court of Appeals.

Dated: February 23, 1966

Yours, etc.,

Carl Rachlin, Esq.
38 Park Row
New York, New York 10038

TO: Hon. Frank Hogan, Esq.
District Attorney, New York County
155 Leonard Street
New York, New York

Clerk of the Criminal Court
City of New York

ORDER APPEALED FROM --

At an Appellate Term of the Supreme Court, First Department, held on the County Court House, Borough of Manhattan, City of New York, on the 20th *day of* January 1966

Present:—*Hon.* Samuel H. Gold, *J.P.*
" " Louis J. Capozzoli
" " Samuel H. Hofstadter (dissenting) *Justices*

FILED
JAN 20
APPELLATE TERM

THE PEOPLE OF THE STATE OF NEW YORK
Respondent,

vs.

Herbert Callender,
Defendant **Appellant**

Nov. 1422

An appeal having been taken to this court by Defendant **from a judgment of conviction of the Criminal Court of the City of New York, County of** New York**, after trial before Hon.** Mitchell J. Shervin**, on the** 15th **day of** November **1964, upon the charge of** Viol. Sec. 722, Subs. 1, 2, and 3 of the Penal Law**, and having been sentenced by Hon.** Louis Cioffi **on the** 13th **day of** January**, 1965, as follows:**

60 days in the Workhouse

and the said appeal having been heard and due deliberation having been had thereon,

IT IS ORDERED AND ADJUDGED that the said judgment so appealed from be and the same is hereby affirmed.

Enter

Justice Appellate Term
Supreme Court, First Department

APPELLATE TERM OPINIONS --

Appellate Term of the Supreme Court, First Department, NOVEMBER, 1965

Present:—HON. SAMUEL M. GOLD, J.P.

" LOUIS J. CAPOZZOLI,

" SAMUEL H. HOFSTADTER,

Justices.

F I [illegible] D
[illegible]N 20
A[illegible] TERM

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,

vs.

HERBERT CALLENDER,
Defendant-Appellant.

No. 422

Appeal by defendant **from** a judgment of conviction **of the** Criminal **Court of the City of New York, County of** New York, after trial, of violating section 722, subdivisions 1, 2 and 3 of the Penal Law [disorderly conduct].

PER CURIAM:

Judgment of conviction affirmed.

I concur

I concur

I ~~concur~~ dissent and vote to reverse the conviction and to dismiss the complaint
[illegible]

Dissenting Memorandum

People v. Callender November No. 422

HOFSTADTER, J.:

For the reasons stated in my dissenting opinion in People v. Penn et al., February, 1964, #45, 152 N.Y.L.J. 76, October 16, 1964, p. 16, affd. 16 N.Y. 581, motion to amend remittitur granted September 27, 1965, and in my dissenting memorandum in People v. Turner et al., May 1965, #145, 154 N.Y.L.J. 93, November 15, 1965, p. 16, , my view is that defendant's acts were constitutionally protected and did not constitute disorderly conduct within the purview of Penal Law, Section 722 constitutionally delimited. I therefore dissent and vote to reverse the conviction on the law and on the facts and to dismiss the complaint.

Nov/65

AFFIDAVIT OF NO OTHER OPINION

STATE OF NEW YORK) SS.:
COUNTY OF NEW YORK)

WILLIAM S. ELLIS, being duly sworn, deposes and says:

1. I am the attorney for both defendants-appellants, and am familiar with all the proceedings had herein.

2. No opinion has been rendered by the court appealed from in this case, except those which are included herein.

William S. Ellis

Sworn to before me this
_____ day of April, 1966.

CERTIFICATION BY ATTORNEY

Pursuant to Section 458 of the Code of Criminal Procedure and Section 2105 of the Civil Practice Law and Rules, the undersigned attorney for Defendant-Appellant, certifies that the foregoing record on appeal contains copies of the notice of appeal, complaint, minutes of the trial, minutes of the judgment rolls, and order and decision appealed from, and that the same has been compared by me with the originals and the same is a true and exact copy and transcript of the whole of such originals.

William S. Ellis

CRIMINAL COURT OF THE CITY OF NEW YORK

COUNTY OF NEW YORK

--x

PEOPLE OF THE STATE OF NEW YORK, :

Respondent, :

-against- : Docket #
C14246 - 64

HERBERT CALLENDER, :

Defendant - Appellant. :

-- x

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

I. Notice is hereby given that HERBERT CALLENDER, the appellant above named, hereby appeals to the Supreme Court of the United States from the final order of the Court of Appeals of the State of New York denying appellant's motion for reargument of this case, entered herein on the 29th day of September, 1966, and from the order affirming the judgement of conviction, entered herein on the 8th day of July, 1966.

This appeal is taken pursuant to 28 U.S.C. §1257(2).

Appellant was convicted of the offense of "Disorderly Conduct" in violation of §722 of the Penal Law of the State of New York and was sentenced to 60 days in the workhouse, and is presently enlarged on bail in the sum of $500.00 (Five Hundred Dollars).

II. The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

(a) The entire record before the Court of Appeals of the State of New York.

(b.) All additional orders of the Court of Appeals and all motion papers before said Court.

III. The following questions are presented by this appeal:

1. Whether § 722 subd. (1) of the Penal Law of New York which provides that "Any person who with intent to provoke a breach of the peace or whereby a breach of the peace may be occassioned,...

1. Uses offensive, disorderly, threatening, abusive or insulting language, conduct or behavior; (is guilty of disorderly conduct)". is void in violation of the due process clause of the Fourteenth Ammendment as applied to a defendant against whom there "no evidence" to show a violation thereof.

2. Whether § 722 subd. (2) which provides that "Any person who with intent to provoke a breach of the peace or whereby a breach of the peace may be occassioned,...

2. Acts in such a manner as to annoy, disturb, interefere with, obstruct or be offensive to others (is guilty of disorderly conduct)".

q

(a.) is void on its face inv violation of the First Ammendment because it encompasses speech and conduct protected by that Ammendment.

(b.) is void in violation of the First and Fourteenth Ammendments as applied against one who solicted the support of police officers to effectuate a "citizens arrest".

3. Whether § 722 subd. (3) of the Penal Law which provides that "Any person who with intent to provoke a breach of the peace or whereby a breach of the peace may be occassioned,...

> 3. Congregates with others on a public street and refuses to move on when ordered by the police; (is guilty of disorderly conduct)".

is void for vagueness under the "due process" clause of the Fourteenth Ammendment when applied to one who is merely talking to police officers in ~~an~~ orderly fashion in the presence of news reporters, in the corridor of a public building.

4. Whether § 722 of the Penal Law of New York which requires "intent to provoke a breach of the peace" or circumstances "whereby a breach of the peace may be occassioned" is void in violation of the First and Fourteenth Ammendments as applied to one merely engaging in peaceful speech with no evidence showing any danger of a breach of peace.

Respectfully submitted,

CARL RACHLIN
Attorney for Herbert Callender
Appellant

150 Nassau Street
New York, New York 10038

DATED: New York, New York
December 28, 1966

[illegible]

From the desk of

MARVIN KARPATKIN

8 1964

May 15, 1964

Dear Carl –

Enclosed please find the Karpatkin variations on the Schiffer theme.

Fortunately the White Castle case was settled so these ideas and tactics never went further than the joint NAACP-AJC Moot Court last September at 20 W. 40 St.

But I trust that there will be ample opportunity for exercise this summer.

Please freely edit, add or delete and return to me copy of your product.

Regards,

Marv.

TO: Nancy

FROM: Charlaine November 9, 1965

Per our conversation of the other day, Mr. Silberberg wants Mr. Farmer to speak on the non-violent nature of CORE, at the Callender trial.

peo v Callender

The trial is to be held November 18, 1965; Criminal Court, Room 535, 10:30 A. M.

If you have any further questions, contact Mr. Silberberg, BE 3-7990.

January 31, 1966

Mr. Nathan Mitchell
325 Broadway
New York, N. Y.

Dear Mr. Mitchell:

I hereby authorize you to turn over all records which you have in the case of The People of the State of New York against Herbert Callender to Carl Rachlin, who is arranging an appeal to the Court of Appeals.

Thank you very much for the great time and effort you have exhausted in my behalf.

Yours For Freedom,

HEC:fcc

Herbert Callender

February 8, 1966

Hon. Stanley H. Fuld
Judge, Court of Appeals
36 W. 44th Street
New York, New York

Re: People v. Callender

Dear Judge Fuld:

With your permission, I would like to elaborate on a few points regarding the above-named case, which I fear were not clearly stated during our discussion on Wednesday, February 2, 1966.

First of all, although Callender was convicted of violating §722, Subds. 1, 2 and 3, there was no evidence whatsoever even hinting at a violation of Subd. 1 ("offensive, disorderly (etc.) language, ") or of Subds. 4 through 12. Callender did not cause a crowd to collect. The crowd was there before he was, and at any rate, it was a "crowd" of reporters who are not within the contemplation of §722 in that they do not provide a threat to breach of the peace.

Neither Callender's conduct nor his presence caused a blockage of the passageway in the contemplation of Subd. 2 of §722. Nor was Callender's conduct in any way offensive. As a matter of fact, Callender was at City Hall to perform a semi-judicial function. According to all accounts he behaved peacefully. We further maintain that he had the right to be there, and wait there while the buiding was open, and that his right to remain was interfered with.

Under these circumstances, his refusal to obey the orders of the police that he leave were not criminal

Cont'd...

within the contemplation of Subd. 3, Even under the doctrine of People v. Galpern (which we maintain has lost its vitality in light of Shuttlesworth 34 L.W. 4009) he would not be guilty. This is so because Callender was not on a public street when he was arrested and he was not congregating "with others". Both of these requirements of Subd. 3 of §722 are clearly not met.

For all of these reasons as well as those raised in our brief before the appellate term, we respectfully request that you grant permission to appeal in this case.

Thank you very much for your time and attention.

Sincerely,

CARL RACHLIN
General Counsel

CR/cs

cc: Fred Hafetz, Esq.
District Attorney
New York County
155 Leonard Street
New York, New York

Peo. v. Callender

March 3, 1966

William S. Ellis, Esq.
41 E. 42nd Street
New York, New York

Dear Bill:

Here is the record and appellate term brief in People v. Callender. Permission to appeal to the Court of Appeals was granted on February 9, 1966 and the Notice of Appeal was filed with the original certificate on February 23, 1966. This means that the appeal must be argued on or before May 23, 1966. Of course, briefs would have to be filed considerably before that date; preferably before April 15.

There are several things which require examination in this case, most notably Shuttlesworth v. Birmingham, 34 L. Week, 4009'65, needs looking into. I believe that it effectively knocks out Galpern v. People of State of New York discussed in the 722 memorandum, also enclosed. Another question worth considering is whether or not §722, Subdivision 3 could possibly have been applied to Callender's acts inside City Hall since

1) there was no congregating with "others"

2) Callender was not on a public Street at the time.

Exactly which subdivision Callender was convicted under is difficult to say. The Criminal Court convicted him on violation of §722 without bothering to elaborate the particular subdivision. The Appellate Term confirmed the conviction without opinion and so it is impossible to say what was in their minds. We must, therefore, analyze each subdivision of Section 722 individually and show in our brief how none of the individual subsections could apply. We must also show that there was no breach of the peace within the meaning of Section 722 and that Callender's conduct was constitutionally protected under the First Amendment. Before I end this rambling letter I would also like to suggest the new case which Carl won last week, might also be relevant, that is, Brown v. Louisiana, a copy of the opinion is enclosed.

Please keep me posted on your progress and what I might do to assist you.

Sincerely,

STEPHEN M. NAGLER

SMN/cs
Encs.

September 19, 1966

Hon. Raymond Cannon
Clerk, Court of Appeals
State of New York
Albany 1, New York

Re: People v. Callender

Dear Mr. Cannon:

Enclosed please find the "original" of a stay signed by Judge Fuld in the above mentioned case. Copies have already been served on the Clerk of the Criminal Court of the City of New York, County of New York, and the District Attorney of New York County.

Very truly yours,

SMN:tp
Encl.

Stephen M. Nagler
Associate to the General
Counsel

[illegible] HERBERT [illegible]

[illegible] ALBANY [illegible]

[illegible] ICARE CORE [illegible]

[illegible] NASSAU ST [illegible]

[illegible] VS HERBERT CALLENDER MOTION FOR [illegible]

[illegible]

MAIL

[illegible] J. CANNON CLERK [illegible] OF APPEALS [illegible]

January 10, 1967

Mr. R. Harcourt Dodds
c/o Legal Department
Charles Pfizer & Company
235 East 42nd Street
New York, New York 10007

Re:People v Herbert Callender

Dear Harry:

Enclosed are documents which I feel should be useful to you in preparation of the Jurisdictional Statement in the above entitled case. It seems rather shocking that through the entire passage of this case from the Criminal Court to the Appellate Term of the Supreme Court to the Court of Appeals of New York, not one judicial opinion has been forthcoming. Perhaps this point should be made in the Jurisdictional Statement. Since the notice of appeal was served and filed on December 28th, 1966, our deadline for filing the Jurisdictional Statement is February 27th. Let us figure that we will need approximately two weeks to"kick it around", and have it printed. The papers enclosed and their pertinence are as follows:

1. Record on Appeal

This marvelous collection of documents contains the minutes of trial and sentence and all other papers required in the Court of Appeals in the State of New York. It is, with several additions, the record which we will use in the Supreme Court of the United States. I will take responsibility for the preparation of the record.

2. Notice of Appeal

The Notice of Appeal contains the basic questions which we propose to raise as "questions presented" in the Supreme Court. They are subject to revision as to form, but not as to substance. In other words we may change the wording but we may not basically revise the substance of the questions and the issues presented in the notice of Appeal.

3. Opinion Of The Appellate Term (See page headed Decisions)

This is as close as we have come to an opinion by any court which has considered the case. The reference in the dissenting memorandum to Penn is worse than useless but the reference People v Turner as is indicated below might be very helpful.

4. Petition For Writ Certiorari *People* v *Turner*

About one month ago Supreme Court granted a *Certiorari* in this case. Turner is the first northern demonstration case which the Supreme Court has agreed to hear in recent times. Like *Callender*, *Turner* arises under section 722 of the Penal Law of the State of New York. We would hope, although the facts in the two cases are completely different, that the Court would hear Callender because it arises under the same statue as Turner. This should in some way becindicated in the Jurisdictional Statement.

5. Jurisdictional Statement *People* v *William Sprowal*

This Jurisdictional Statement is enclosed only as an example of the form which a Jurisdictional Statement should take. This is best described in Stern and Gressman's little book on Supreme Court proceedure.

6. Order Denying Re-Argument and Ammending Remittitur

This is one of the additional papers referred to in paragraph 1. A copy of the ammended Remittitur must appear in the appendix to the Jurisdictional Statement. (See People v Sprowal).

That is about all I can think of. We should talk further about this in the very near future. In the interim please remember to give our best to Barbara. See you soon.

Sincerely,

Stephen Nagler

SN:n

February 24, 1967

Hon. John Davis
Clerk
Supreme Court of the United States
Washington, D. C.

Dear Sir:

Enclosed please find a certified record in the case of People v. Herbert Callender. A copy of the Notice of Appeal served and filed on December 28, 1966 is enclosed therein.

Also attached is a check for one hundred dollars($100.-) to cover the filing fees. The appropriate number of copies of the Jurisdictional Statement are being sent by our printer under separate cover.

Please be informed that I am the attorney of record for Herbert Callender and all matters pertinent to this appeal should be directed to me.

Very truly yours,

Carl Rachlin

CR:m
Enclosures(2)

SUPREME COURT OF THE STATE OF NEW YORK
FIRST DEPARTMENT APPELLATE TERM

STEPHAN GORDON
Defendant-Appellant,

-against-

PEOPLE OF THE STATE OF NEW YORK,
Respondent

Affidavit
Index No.______

STATE OF NEW YORK)
COUNTY OF **NEW YORK** ss:

GEORGE SCHIFFER, ESQ. , being duly sworn deposes and says:

I am an attorney with offices at **40 East 49th Street** Borough of **Manhattan**, City of **New York** and State of New York.

1. I was one of the attorneys representing the defendant-appellant at the trial of this case in the Criminal Court, **of New York** County.

2. This action was commenced on or about the **21st** day of **August** , 19**63** . The cause was thereafter placed upon the calendar for Part **IC-1** of the Criminal Court of the County of **New York** . The case was reached for trial on the **26th** day of **August** 19**63** and the defendant-appellant was found guilty under § **722** of the Penal Law, and was sentenced to **Five Days in the Workhouse.**

3. An appeal was taken to this Court from this judgment by filing a Notice of **Appeal** in the office of the clerk of **New York** County and serving a copy of such Notice on the District Attorney of **New York** County on the day of , 19 .

4. Deponent believes that the contentions of defendant-appellant for Appeal to this Court have merit and that defendant-appellant is innocent.

a. There was no disturbance of the peace prior to the arrest of defendants, and

b. A conviction under the circumstances would render § 722 unconstitutionally vague and would deprive the defendants of their rights under the First Amendment to the U. S. Constitution.

5. The amount and sources of defendant-appellant's income are as follows: **Substitute teacher, New York Board of Education - $28.00 per day. This amounted to $2,000 in 1964. Mr. Gordon has no other source of income.**

6. Defendant-appellant's property and the value thereof is as follows: **Used clothing to the value of approximately $150.**

7. Defendant-appellant does not own an automobile.

8. Defendant-appellant has savings in the amount of **$25.00**

9. Defendant-appellant is unable to pay the costs, fees and expenses necessary to maintain this appeal.

10. Defendant-appellant desires that I be assigned to prosecute this Appealand I have agreed to do so without compensation.

11. Defendant-appellant is not now incarcerated.

12. No previous application for the relief sought herein has been made to this or any other court.

WHEREFORE, I ask permission on behalf of defendant-appellant to prosecute the Appeal in the above-entitled action as a poor person on the original record and typewritten briefs and that the court assign me as attorney and counsel for that purpose and that as attorney and counsel I agree to prosecute the same without compensation.

____

Attorney-at-Law
Office and P.O. Address

Sworn to before me this

day of , 19

COURT REPORTER'S MINUTES

Criminal Court of the City of New York

Part 11, County of Manhattan

THE PEOPLE OF THE STATE OF NEW YORK
on the complaint of
Walter Brown
vs
George Cannan, Elenterio Gonzales,
Jeffery Kalb, Joel L. Freedman,
et. al.,
defts.

BEFORE
Hon. Benjamin Gassman
Judge

August 21, [illegible]

CHARGE Vio. Sec. 1434, PL and
Mal. Mischief

~~TRIAL~~ (or) HEARING

APPEARANCES:
For the People Richard H. Kuh, Esq.,
For the Defense George Schiffer, Esq.,
Kenneth Kaplan, Esq.

WITNESS	DIRECT	CROSS	RE-DIRECT	RE-CROSS

[illegible]
Official Court [illegible]

CRIMINAL COURT OF THE CITY OF NEW YORK

PART 11 - BOROUGH OF MANHATTAN

The people of the State of New York
on complaint of
WALTER BROWN
vs
GEORGE CANNON,
ELENTERIO GONZALES,
JEFFERY KALB
JOEL L. FREEDMAN,
Defendants.

Docket Nos. 38936, 38937,
38938, 38939.

CHARGE:
Vio. Sec. 1434, of the Penal Law, and Malicious Mischief.

The people of the State of New York
on complaint of
WALTER BROWN
vs
ELENTERIO GONZALES
JEFFERY KALB
JOEL L. FREEDMAN,
Defendants.

Docket Nos. 38940, 38941,
38942.

CHARGE:
Dis. Con. Subdv. 2 & 4.

The people of the State of New York
on complaint of
GEORGE DILLINGHAM
vs
JON K. SCHAEFER
ANTONIO VASQUEZ
STEPHAN W. GORDON,
ALEXANDER BOYER,
Defendants.

Docket Nos. 38943, 38944,
38945, 38946

CHARGE:
Vio. Sec. 722, subdv. 2 & 3.

August 21st, 1963.

Before:

HON. BENJAMIN GASSMAN,
Criminal Court Judge.

Appearances:

FOR THE PEOPLE:
Richard H. Kuh, Esq.,
Asst. District Attorney.

FOR THE DEFENDANTS:
George Schiffer, Esq.,
40 East 49th Street,
New York, N.Y. and

Kenneth Kaplan, Esq.,
37 Wall Street,
New York, N.Y., of counsel.

COURT OFFICER: Docket Nos. 38940, 38941, and 38942. Defendants, Elenterio Gonzales, Jeffery Kalb and Joel L. Freedman, charge, disorderly conduct, officer, Walter Brown of the 5th precinct.

Officer George Dillingham, 5th precinct. Docket Nos. 38943 to 38946. Defendants, Jon K. Schaefer, Antonio Vasquez, Stephan W. Gordon and Alexander Boyer, charged with violation of Section 722, subdivisions 2 and 3.

COURT OFFICER: Docket Nos. 38936, to 38939. Defendants, George Cannon, Elenterio Gonzales, Jeffery Kalb and Joel L. Freedman, charged with violation of Section 1434 of the Penal Law and malicious mischief by officer Walter Brown of the 5th precinct.

(Addressing officers Walter Brown and George Dillingham): Raise your right hand. Do you swear to the truth of your affidavits?

OFFICER BROWN: I do.

OFFICER DILLINGHAM: I do.

THE COURT: I am going to adjourn these cases. What day?

MR. KUH: We will ask your Honor to adjourn it to the 26th.

MR. KAPLAN: Mr. Kuh's request is the 26th, is that right?

MR. KUH: This was after conference with counsel. I will be ready for trial tomorrow.

MR. KAPLAN: The 26th.

THE COURT: August 26th. Part 1-B.

MR. KUH: Part 1-C.

THE COURT: On the question of bail -

MR. KAPLAN: On the question of bail, your Honor, I am given to understand that of all of the defendants before your Honor, five or six are N.Y.U. students. The other two gentlemen, I understand, are family men. As far as I understand, your Honor, and I stand corrected by anybody and I ask them to speak up if I make a mistake, nobody has been convicted of a crime before. In view of the fact that the charges are an offense, disorderly conduct, two and three, and I understand there is a charge of 1434 of the Penal Law, in view of the lack of severity of the crime, and, further, in view of the fact that the majority of the men are N.Y.U. students, and the likelihood of their return on all the adjourn dates, I ask your Honor to parole these people.

THE COURT: I see in the complaint you have George Cannon. Who is Cannon?

GEORGE CANNON: Right here.

THE COURT: And Gonzales, Jeffery Kalb and Joel Freedman. Where are the other defendants?

COURT OFFICER: The other defendants are charged with disorderly conduct.

THE COURT: They are not named in here. You have four defendants named here.

COURT OFFICER: That is the charge of 1434 of the Penal Law.

THE COURT: And you have Schaefer, Vasquez, Gordon and Boyer. How many are there?

COURT OFFICER: Eight.

THE COURT: Mr. Kuh, what have you to say?

MR. KUH: If counsel can give the Court some reliable information about each defendant, indicating roots, the people will consent to parole, but we cannot consent to the statement that "I believe four or five are N.Y.U. students".

MR. KAPLAN: If my statement was too generic, may I go down the list and ask myself?

THE COURT: George Cannon, what about him?

MR. KAPLAN: Mr. Cannon advises that he lives at his present address for the past year. He has never been convicted.

THE COURT: What does he do?

MR. CANNON: I am a member of the Teamsters Local. I drive a truck -- No. 87.

THE COURT: The second one, Elenterio Gonzales.

MR. KUH: If your Honor wants to know whether the people consent as to each one, I would like to know more about this man other than knowing he is a member of a union. Is he employed regularly by one employer? How long has he been so employed?

MR. CANNON: I have been employed -- under the circumstances, things of late have been --

MR. KUH: (Interposing) Are you employed now?

MR. CANNON: I am.

MR. KUH: For whom do you work?

MR. CANNON: Acme Transfer Storage Company for three years.

MR. KUH: What is the address?

MR. CANNON: 90 Jay Street, Brooklyn,

The main office is 2 Lafayette Street.

MR. KUH: Were you ever convicted of a crime?

MR. CANNON: No, sir.

MR. KUH: Are you employed regularly?

MR. CANNON: Daily worker.

MR. KAPLAN: I don't mind his asking it, except I don't see how it has a bearing.

THE COURT: It has a bearing on the question of whether the defendant has roots and will appear in the event he is paroled. There is nothing wrong with the question Mr. Kuh is asking.

MR. KAPLAN: Do you work regularly?

MR. CANNON: Every day.

THE COURT: How long have you been working on the job?

MR. CANNON: Three years.

THE COURT: Are you married?

MR. CANNON: I am.

THE COURT: Are you living with your wife?

MR. CANNON: I am.

THE COURT: What about Cannon?

MR. KUH: Consent.

THE COURT: Elenterio Gonzales.

MR. KAPLAN: Could we get an interpreter for him?

THE COURT: Jeffery Kalb.

MR. KAPLAN: This defendant lives with his parents and the address is in Fresh Meadows. He is a student of N.Y.U. That is Jeffery Kalb.

THE COURT: What course are you taking?

MR. KALB: English major.

THE COURT: What about him?

MR. KUH: I wonder as to each defendant - I would gather from what I see, if there is not any more contact than we have, we are taking each defendant at his word - can each defendant produce some identification of some kind to verify his address and what he says about himself?

THE COURT: Have you got any identification on you?

MR. KAPLAN: Your Honor, may I submit a Selective Service registration on behalf of Kalb (producing).

THE COURT: Certificate registration dated July 17, 1961. He has a social security No. 069-34-2494, and apparently, he has an Associated Hospital Blue Cross card.

MR. KUH: Is any address given on his identification?

THE COURT: On the Associated Hospital card, 325 (?) Street. Is that where you live now?

MR. KALB: That is where I was living in the past year. I live with my parents now at the address on the draft card. During the school period I was living in the City.

THE COURT: Here is a receipt from the pursar of New York University, dated December 27th, 1962. Is there any objection to paroling him?

MR. KUH: Consent.

MR. KAPLAN: This is an identification in behalf of Mr. Cannon.

THE COURT: Cannon presents a customs

form, Treasury Department certificate, George Cannon, 184 East 1st Street, New York City.

MR. CANNON: That was my last address.

THE COURT: He is apparently connected with the Acme Transfer Storage Company. Are you still working for them?

MR. CANNON: Yes, sir.

THE COURT: Where do you live?

MR. CANNON: 40 MacDougal.

THE COURT: I understand Mr. Kuh consents to paroling him?

MR. KUH: Yes, sir.

THE COURT: Joel Freedman.

MR. KAPLAN: The interpreter is here. Shall we take this gentleman (indicating defendant Gonzales)?

THE COURT: Who is that, Gonzales?

MR. KAPLAN: Gonzales.

COURT INTERPRETER FRED WURZL: There are two defendants to whom the charges were read as they appear in the affidavits and they were advised of their rights as appears on the face of the affidavits. I think they are Gonzales and Vasquez. He (indicating Gonzales) says, "I was laid off in the factory. I go back again on Monday".

THE COURT: Where do you work?

MR. GONZALES (Through Court Interpreter): Toy Novelty.

THE COURT: How long have you been working there?

COURT INTERPRETER: Six years.

THE COURT: Are you married?

COURT INTERPRETER: Divorced.

THE COURT: With whom do you live there?

COURT INTERPRETER: With his niece.

THE COURT: Where?

COURT INTERPRETER: Elridge Street, 209.

THE COURT: Have you got any identification with you?

COURT INTERPRETER: Yes, sir.

THE COURT : Let me see it.

MR. KUH: If your Honor please, as to the last defendant who was questioned, if I understood his answers correctly, at first he he said, "I am not working, but will start on a job on Monday", and then I thought he said, "I have been working six years".

COURT INTERPRETER: He said he was laid off and he is going to start working again Monday.

THE COURT: This defendant produces a card of the Selective Service System in Puerto Rico, dated February, 1952. That is pretty old. What about Gonzales?

MR. KUH: The people ask $50. cash bail.

MR. KAPLAN: May I ask a few more questions that may satisfy your Honor as to parole?

THE COURT: Go ahead.

COURT INTERPRETER: He has a Social Security card.

MR. KAPLAN: The Social Security card indicates the name. It doesn't indicate the address. Will the card suffice?

MR. KUH: The defendant's work status is doubtful. His marital status is uncertain.

THE COURT: Bail, $50. cash in his case.

MR. KAPLAN: Will your Honor consider $25? I don't think he can make $50.

THE COURT: $25. cash bail. What about Joel Freedman? What do you do for a living?

MR. FREEDMAN: I am a student at New York University. English major with music minor.

THE COURT: Are you working?

MR. FREEDMAN: I am a student.

THE COURT: Do you work during the day?

MR. FREEDMAN: No, I do not. I have occasional jobs in music.

THE COURT: Then you have not any steady job?

MR. FREEDMAN: No, sir.

THE COURT: Are you single or married?

MR. FREEDMAN: Single.

THE COURT: With whom do you live?

MR. FREEDMAN: I have my own apartment, 145 Waverly Place.

THE COURT: How long have you been living there?

MR. FREEDMAN: A year and a half.

THE COURT: Have you any identification?

MR. FREEDMAN: I do.

THE COURT: Let me see it. The defendant produces list of credit cards and driver's license. Do you operate an automobile?

MR. FREEDMAN: I have an operator's license.

THE COURT: Did you ever live at Hastings on the Hudson?

MR. FREEDMAN: I do, your Honor.

THE COURT: When did you move to 145 Waverly Place?

MR. FREEDMAN: A year and a half ago.

THE COURT: There is an operator's license, F-18186 26598 842916, issued September, 1962, Selective Service card issued January, 1962, Social Security card 092-36-1636. He has a Chemical Bank, New York Trust Company identification card, account 043-548601, Union membership card, local 802, Associated Musicians, Greater New York, Square Club counsellor, New York University. What about it?

MR. KUH: Is there anything that verifies he is an enrolled student at N.Y.U.? Is there anything to verify his status as a student?

THE COURT: Operator's license, 145 Waverly Place.

MR. KUH: People consent.

THE COURT: People consent to parole him. With respect to the defendants, George Cannon, Jeffery Kalb and Joel Freedman, I am paroling you, to return to part 1-C of this court on August 26th, at 9:30 a.m. If you do not return to court on that day or any other day as required, there will be an additional charge of parole jumping made against you; is that clear?

DEFENDANT CANNON: Yes, sir.

DEFENDANT KALB: Yes, sir.

DEFENDANT FREEDMAN: Yes, sir.

THE COURT: As far as the defendant Gonzales is concerned, bail is set at $25. cash.

MR. KUH: May it be clear that the statement, with the exception ~~of~~ of the defendant Cannon, applies to both the misdemeanor charge and the disorderly conduct charge.

THE COURT: I have not come to the disorderly conduct charge. On the disorderly conduct, with respect to Gonzales, Kalb and Freedman, what about bail as to Gonzales?

MR. KUH: The people would ask your Honor to make it $25. cash bail in his case, in view of the fact that counsel said he can only make $25. bail.

MR. KAPLAN: Your Honor, may I say apropos of what we are speaking that in Mr. Gonzales's wallet is an order adjusting the maximum rent. It is dated - it must be recent, and it is for the occupant at 209 Elridge Street. That gives credence to the fact that he lives there. In view of the fact we brought it up to this close date, will your Honor consider paroling him?

THE COURT: In view of the fact that I fixed bail in the other case, I am going to parole the three defendants Gonzales, Kalb and Freedman. I am going to parole them in the disorderly conduct case, and give them the same warning: If you do not appear in part 1-C on August 26th or any other day required, there will be an additional charge of parole jumping lodged against you; is that clear?

DEFENDANTS GONZALES, KALB and FREEDMAN: Yes, sir.

THE COURT: With respect to the defendant John Schaefer.

MR. KUH: As I understand it, as to the defendant Gonzales you are paroling him in the disorderly conduct case.

THE COURT: And fixing bail of $25. in the other case.

MR. KUH: May what your Honor does to him in the case in which he has been paroled be related to him through the Interpreter?

COURT INTERPRETER: He was advised under Section 1694-B of the Penal Law, on the disorderly conduct charge.

THE COURT: We now get down to the defendant Jon Schaefer.

MR. KAPLAN: Would your Honor consider this paper from the Rent Commission as far as Gonzales is concerned? This applies to Gonzales so that he may be paroled.

THE COURT: Gonzales's working record is not satisfactory. This is an order adjusting the maximum rent.

MR. KAPLAN: It indicates 209 Elridge Street. That is where he said he lives.

THE COURT: I will let the bail of $25. stand.

MR. KAPLAN: The two others were paroled. Couldn't he be paroled? Everybody else is paroled. He is in the same group.

THE COURT: If the district attorney doesn't consent to a parole --

MR. KAPLAN: Will you consent to parole him?

MR. KUH: In fairness to counsel and his client, the district attorney's office with very little verified information has been consenting to parole wherever we could do it. Here we have a defendant with no established roots in the community and I think when counsel is pushing us, his pushing could be too far.

THE COURT: There will be no change. Now, what about Jon Schaefer?

MR. SCHIFFER: He is known to me personally and I know his background. He is a staff worker at CORE. He is a dedicated young man and he is not going to jump bail.

THE COURT: I would like to know about his background. How old are you?

THE DEFENDANT: 26 years. I am a field representative for CORE.

THE COURT: Do you get paid for your work?

DEFT. SCHAEFER: I do.

THE COURT: Where do you live, and withWhom?

DEFT. SCHAEFER: 322 Linden Boulevard, in Brooklyn, apartment D-6. The apartment is in the name of Peter Nimony.

THE COURT: Are you registered with the Selective Service.

DEFT. SCHAEFER: Yes, sir.

THE COURT: Have you any identification of any kind?

DEFT. SCHAEFER: (Producing paper).

THE COURT: He has a certificate of registration, with his birth area; is that Seattle, Washington?

DEFT. SCHAEFER: Yes, sir, that is where I was born.

THE COURT: Selective Service System, Jon Schaefer, registered January 23, 1963, classified class 5-A. What classification is that?

DEFT. SCHAEFER: I registered in 1958. I served three and a half years in the United States Army and I am now in the reserve status where I am not going to be called up immediately.

THE COURT: What is your position?

MR. KUH: We consent, largely in the light of Mr. Schiffer's statement as well as the defendant's answers. Mr. Schiffer, in fact, has stated that he knows the defendant's background.

THE COURT: Do you consent to parole?

MR. KUH: Yes, sir.

THE COURT: Antonio Vasquez, what about him? How old are you?

ANTONIO VASQUEZ (Through Court Interpreter Wurzl): 32.

THE COURT: What do you do for a living?

COURT INTERPRETER: I was working previously in a restaurant.

THE COURT: What do you do now?

COURT INTERPRETER: Now I am in the school and I get welfare.

THE COURT: How long have you been on welfare?

COURT INTERPRETER: About two years.

THE COURT: What is wrong with you?

THE COURT: Are you sick?

COURT INTERPRETER: I can't find work.

THE COURT: What is the bail in this case?

MR. KAPLAN: May we go further? The defendant is on welfare.

THE COURT: The fact the man couldn't find a job in two years registers very badly with me.

MR. SCHIFFER: I do not want to presume on the court. The likelihood of his return is just as good as with the others. There is a written receipt (indicating paper).

THE COURT: The man shows little responsibility. For a period of two years he doesn't work and he is satisfied to live on the bounty of the community.

COURT INTERPRETER: I couldn't find work. I have five children.

MR. KUH: Do we have anything to verify the defendant's address?

MR. SCHIFFER: A written receipt.

MR. KUH: How long does he live there?

COURT INTERPRETER: Three and a half years.

MR. KUH: The people would ask $25. cash bail.

THE COURT: $25. cash bail.

Stephan Gordon, how old are you?

MR. GORDON: 22.

THE COURT: What do you do for a living?

MR. GORDON: I am a student at N.Y.U.

THE COURT: What course are you taking?

MR. GORDON: School education, to be a science teacher.

THE COURT: Where do you live?

MR. GORDON: 60 / Knolls Crescent.

THE COURT: With whom do you live there?

MR. GORDON: With my parents.

THE COURT: What identification do you have?

MR. GORDON: (Producing paper).

THE COURT: This defendant has an Associated Hospital Service card, certificate No. 10840685. There is no address given on there.

THE COURT: --Just Stephen Gordon, Selective Service, notice of classification, no address. New York University, student's address, 16 Knolls Crescent, New York. Receipt from the pursar, dated July - I don't know what year.

DEFT. GORDON: 1963.

THE COURT: Is that this year's?

DEFT. GORDON: That is right.

THE COURT: What about it?

MR. KUH: Consent to parole.

THE COURT: Alexander Boyer, how old are you?

DEFT. BOYER: 19.

THE COURT: What do you do for a living?

DEFT. BOYER: I am a student at N.Y.U.

THE COURT: What course are you taking?

DEFT. BOYER: History major.

THE COURT: Where do you live?

DEFT. BOYER: 32 Avenue B, New York.

THE COURT: The defendant produces certificate from the pursar's office, the date erased, Alexander Boyer, 34 Avenue B, is that where you live?

DEFT. BOYER: Yes, sir.

THE COURT: Social Security No. 077-30-8043. Selective Service card.

How long are you living at your present address?

DEFT. BOYER: Six months.

THE COURT: What about him.

MR. KUH: People consent to parole, your Honor.

THE COURT: In the case of Antonio Vasquez, bail is fixed at $25. cash. The case is adjourned to August 26th, 1963. Part 1-C. With respect to Jon Schaefer, Stephan Gordon and Alexander Boyer, I warn you now that if you do not appear in Court on August 26th or any other day required by the Court, there will be an additional charge of parole jumping lodged against you; is that clear?

DEFTS. JON SCHAEFER, STEPHAN GORDON and ALEXANDER BOYER: Yes, sir.

196-20M-702586(64) 373

COURT REPORTER'S MINUTES

Criminal Court of the City of New York

Part 1-C., County of NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK
on the complaint of
PATROLMAN BROWN
vs
GEORGE CANNON et al
Defendants.

BEFORE
Hon. GEORGE S. RADER
Judge.

August 26, 1963

CHARGE: Malicious Mischief

TRIAL (or) HEARING

APPEARANCES:
For the People PATRICK McGINLEY, ESQ.
Assistant District Attorney
For the Defense GEORGE SCHIFFER, ESQ.
40 East 49th St., New York, NY

WITNESS	DIRECT	CROSS	RE-DIRECT	RE-CROSS

Carol M. Wright, C.S.R.
Official Court Reporter

CRIMINAL COURT OF THE CITY OF NEW YORK
PART 1-C : : : BOROUGH OF MANHATTAN

- X

THE PEOPLE OF THE STATE OF NEW YORK	:Docket Nos: B-6296
-on the Complaint of-	: B-6297 B-6298
PATROLMAN BROWN	: B-6299
-vs-	:
GEORGE CANNON, ELEUTERIO GONZALES, JEFFERY KALB and JOEL FREEDMAN,	:Charge: Violatio of Section 1434 : of the Penal
Defendants.	Law, Malicious : Mischief

- X

THE PEOPLE OF THE STATE OF NEW YORK	: Docket Nos. C-14230
-on the Complaint of-	: C-14231 C-14232
PATROLMAN DILLINGHAM	: C-14233
-vs-	:
JON SCHAEFER, ANTONIO VASQUEZ, STEPHAN GORDON and ALEXANDER BOYER,	Charge: Disor- : derly Conduct :
Defendants.	:

- X

THE PEOPLE OF THE STATE OF NEW YORK	:Docket Nos: C-14235
-on the Complaint of-	: C-14236 C-14237
PATROLMAN BROWN	:
-vs-	:
ELEUTERIO GONZALES, JEFFERY KALB and JOEL FREEDMAN,	Charge: Disor- : derly Conduct :
Defendants.	:

- X

(cont'd)

(cont'g)

100 Centre Street
New York 13, N.Y.
August 26, 1963

BEFORE:

HON. GEORGE S. RADER
Justice

APPEARANCES:

For the People:

PATRICK McGINLEY, ESQ.
Assistant District Attorney
155 Leonard Street
New York 13, N.Y.

For All Defendants:

Messrs. SCHIFFER & COHEN
40 East 49th Street
New York 17, N.Y.

By: GEORGE SCHIFFER, ESQ.

PAUL GARDELLA
Court Officer

CAROL M. WRIGHT, C.S.R.
Official Court Reporter

THE BRIDGEMAN: Docket Numbers B-6296, B-6297, B-6298 and B-6299, George Cannon, Eleuterio Gonzales, Jeffery Kalb and Joel Freedman, charged with violation of Section 1434 of the Penal Law, Malicious Mischief, on the Complaint of Patrolman Brown, 5th Precinct, represented by George Schiffer, 40 East 49th Street.

DISTRICT ATTORNEY: There is another charge against them.

THE BRIDGEMAN: Docket Numbers C-14230, C-14231, C-14232 and C-14233, Jon Schaefer, Antonio Vasquez, Stephan Gordon and Alexander Boyer, all charged with Disorderly Conduct on the Complaint of Patrolman Dillingham, 5th Precinct.

Docket Numbers C-14235, C-14236 and C-14237, Eleuterio Gonzales, Jeffery Kalb and Joel Freedman, all charged with Disorderly Conduct, on the Complaint of Patrolman Brown, 5th Precinct.

DISTRICT ATTORNEY: Your Honor, the People are requesting a second call in this case in order to ascertain whether we have the proper section of the law on the misdemeanor case.

THE COURT: All right. Second call.

* * * * * * * *

THE BRIDGEMAN: Recalling Docket Numbers B-6296, B-6297 and B-6298 and B-6299, George Cannon, Eleuterio Gonzales, Jeffery Kalb and Joel Freedman, charged with 1434 of the Penal Law; Docket Numbers C-14230, C-14231, C-14232 and C-14233, C-14235, C-14236 and C-14237, Jon Schaefer, Antonio Vasquez, Stephen Gordon, Alexander Boyer, Eleuterio Gonzales, Jeffery Kalb and Joel Freedman, all charged with Disorderly Conduct, Subd. 2.

They are all represented by George Schiffer.

DISTRICT ATTORNEY: He went out for a minute.

THE COURT: Is he in the hall?

DISTRICT ATTORNEY: I understand he went downstairs for coffee.

THE COURT: Call it again.

* * * * * * *

THE BRIDGEMAN: Recalling Dockets B-6296-7-8-9, Cannon, Gonzales, Kalb and Freedman, charged with Malicious Mischief; also, C-14230-1-2-3-4-5-6-7, Schaefer, Vasquez, Gordon, Boyer, Gonzales, Kalb and Freedman, charged with Disorderly Conduct.

DEFENDANTS' ATTORNEY: George Schiffer, 40 East 49th Street, New York 17, representing all defendants.

DISTRICT ATTORNEY: Your Honor, with respect to the charge of 1434 of the Penal Law as against the defendants so charged, the People respectfully move to amend the Complaint to violation of Section 1220 of the Vehicle and Traffic Law.

Through an oversight and technicality on our part, the defendants were charged with a violation of 1434 of the Penal Law. This section has been repealed and is now included in substantially the same words, or substantially the same acts, in Section 1220 of the Vehicle and Traffic Law.

So, I would ask to amend the Complaint

to that extent.

MR. SCHIFFER: Your Honor, we object to such amendment. We are not familiar with the text of that statute.

THE COURT: You plead surprise, sir?

MR. SCHIFFER: Well, yes, your Honor.

THE COURT: You will be given an adjournment to allow you an opportunity to familiarize yourself. It actually is the same charge. You know, the District Attorney is not amending the wording of the Complaint but merely changing the section under which you are charged.

Am I correct, Mr. McGinley?

DISTRICT ATTORNEY: That is correct, your Honor.

THE COURT: Actually, you are facing the precise same charge; however, if you wish to plead surprise, you are entitled to do so and you will be given an opportunity to prepare.

MR. SCHIFFER: Your Honor, we further desire to have all of these matters adjourned for several reasons. In the first place, the preliminary investigation which I had been able to accomplish -- these people were arrested on Wednesday past -- indicates that I shall have to subpoena a substantial number of witnesses.

THE COURT: For instance, whom?

MR. SCHIFFER: Well, your Honor, there are a substantial number of police witnesses; there are some Building Inspectors; there are other people with direct knowledge of the facts.

In addition, your Honor--

THE COURT: (interrupting) How would the Building Inspectors come into this matter?

MR. SCHIFFER: Well, your Honor, the question is what was removed. The facts in this case appear to involve the following: That the defendants on a certain day in the exercise of their rights to petition for redress of grievance, brought certain rubbish, intending to take this to show it to the Commissioner of the Department of Buildings, Commissioner Birns, and Deputy Commissioner of Housing Gribitz.

It also appeared from our preliminary

investigation the police frustrated and thwarted this plan by actually arresting these defendants before they could do anything of the kind.

Now, they are charged with dumping garbage, albeit there was no garbage in the truck.

We propose to show that the policemen were aligning the road, directing the truck into a specific parking spot, which was not the place where the truck intended to go.

We propose to show that the situation that caused this particular action was not in any general sense, but in a specific sense, applied to these buildings, and to show where the material in question came from, what it was, all of which is directly material to the charge.

THE COURT: Well, I think the arresting officers who were there on the premises know what the material was. They viewed it. As far as where the material came from, I think that's part of the defense. The defendants can testify where it came from.

MR. SCHIFFER: Well, I think in this particular instance, because of the importance of the case, that these defendants would like to have the opportunity of presenting corroborative evidence.

THE COURT: You have a number of defendants who, I assume, each know where it came from and they could corroborate.

MR. SCHIFFER: Well, your Honor, this is, as I say, not the only point. There are a considerable number of witnesses.

THE COURT: All right. The case will be set down for--

DISTRICT ATTORNEY: Thursday, your Honor.

THE COURT: Thursday, August 29th.

MR. SCHIFFER: If your Honor please, I have a further brief which must be to the printer before then. I respectfully request -- your Honor, as counselor I simply can not prepare these cases by August 29th. I look upon these cases as not easy and simple in structure.

THE COURT: I think they can prepared very, very easily by that time.

Same bail conditions.

DISTRICT ATTORNEY: Would your Honor make it Final that day?

THE COURT: Parole continued.

MR. SCHIFFER: In view of the fact the charges under 1434 must be dismissed as the statute was repealed, I would like to get the truck impounded released. It is a rented truck. There is no particular reason that I know of why that truck must continue to remain impounded. Would your Honor order it released?

THE COURT: That's a matter for the District Attorney. They may want it for police investigation, or for the District Attorney's Office investigation or some other purpose. That is within the jurisdiction of the District Attorney's office.

MR. SCHIFFER: In view of the fact the truck is being held pursuant to a statute which has been repealed, there is no basis for impounding the truck in the first instance.

I am requesting your Honor make an order of release.

DISTRICT ATTORNEY: It is interesting to note counsel has not in any way approached the District Attorney to discuss this matter.

THE COURT: The Court will not rule on that at this time. I see no reason to interfere with any possible investigation. If you can prove that the People no longer need it, after having had talks with the District Attorney's office, why, at such time you can present the request.

DISTRICT ATTORNEY: We will be happy to confer with counsel concerning that, your Honor.

THE COURT: Marked Final for Thursday.

Parole continued and bail of Twenty-Five Dollars ($25.00) continued as against Gonzales.

(Whereupon the matter was concluded.)

CERTIFIED TO BE A TRUE AND ACCURATE
TRANSCRIPT OF MINUTES TAKEN IN THIS
CASE BY ME.

Carol M. Wright

CAROL M. WRIGHT, C.S.R.
Official Court Reporter

THE CRIMINAL COURT OF NEW YORK

PART 1C-1 NEW YORK COUNTY DOCKET NOS.

- -X B6296
6297
THE PEOPLE OF THE STATE OF NEW YORK : 6298
6299
--against-- : C14235
14236
GEORGE CANNON, ELEUTERIO GONZALES, JEFFERY KALB, : 14237
JOEL FREEDMON, ANTONIO VASQUEZ, STEPHAN GORDON, 14230
ALEXANDER BOYER, JON SCHAEFFER, : 14231
Defendants 14232
: 14233

- -X 722-2,3,4
1220 VTL

ON: August 29, 1963

AT: 100 Centre St.

BEFORE:

HON. GEORGE S. RADER

Appearances:

For the People:

Patrick W. McGinley, Esq.
Assistant District Attorney
New York County
Richard Kuh, Esq.
Assistant District Attorney
New York County

For the Defendants:

George Schiffer, Esq.
40 East 49th Street
New York, N.Y.

Kenneth Kaplan, Esq.
37 Wall Street
New York, N.Y.

Harold M. Lustig
Official Court Reporter

Interpreter: Edward Zampella

Bridgeman: M. Diamond

COURT OFFICER: Docket numbers B6296, B6297, B6298, B6299, George Cannon, Eleuterio Gonzales, Jeffery Kalb, Joel Freedmon, charged with violation of 1220 of the Vehicle and Traffic Law. Docet number C14235, C14236, C14237, Eleuterio Gonzales, Jef--fery Kalb, Joel Freedmon, also charged with violation of 722 Subdivision two and four of the Penal Law. Docket number C14230, C14231, C14232, C14233, Jon Schaeffer, Antonio Vasquez, Stephan Gordon, Alexander Boyer, charged with Disorderly Conduct, subdivision two and three. Notice of appearance by George Schif--fer, 40 East 49th Street. Notice of appearance by Kenneth Kaplan, of Counsel, 37Wall Street.

MR. KAPLAN: All defendants plead not guilty, Your Honor.

JUSTICE RADER: In order that we may understand each other properly, do you, Mr. Schiffer, represent the remaining defendants, or do you, Mr. Kaplan, represent all of the defendants?

MR. KAPLAN: Your Honor, in response to that, may I ask this Court that for the purpose of cross examination of all witnesses in the people's case, I represent all of them and I intend to cross examine. However, we have certain expert witnesses we anticipate calling. Mr. Schiffer has a closer knowledge of the particular people, including Commissioner Birns and Assistant Commissioner Gribetz of the Housing Department. I ask leave of the Court to permit about four cases in these experts- - - leave of the Court for Mr. Schiffer to conduct the examination.

JUSTICE RADER: Wouldn't it be better-- the judicial custom of Mr. Schiffer representing some of the defendants so he might have a proper place in the trialand have the judicial right to cross examine in that case.

MR. KAPLAN: Your Honor, in keeping with Your Honor's suggestion, may the record indicate that I, Kenneth Kaplan, represent the following defendants.

JUSTICE RADER: Just hold it a moment.

MR. KAPLAN: Cannon, Boyer--

JUSTICE RADER: Let me list it.

MR.KAPLAN: Gorge Cannon, I'll represent Boyer, Gordon, G-o-r-d-o-n, Schaeffer, S-c-h-a-e-f-f-e-r, and Basquez, B-a-s-q-u-e-z. Mr. Schiffer, if the Court please, represents--will represent Cannon, C-a-n-n-e-n, Freedmon, F-r-e-e-d-o-m, Kalb, K-a-l-b, and Gonzalez.

JUSTICE RADER: Also for the purpose of easy indentification with the defendant, will the defendants be seated as follows; First row, Mr. Boyer, first to the left, Mr. Gordon, next to him---

MR. KAPLAN: Excuse me for interrupting you, we need a Spanish interpreter.

JUSTICE RADER: All right. Mr. Schaeffer next, and Mr. Vasquez the fourth seat, and, thereafter, Mr. Cannon to the left, Mr. Freedmon, Mr. Kalb and Mr. Rodrequez.

MR. MCGINLEY: If Your Honor please, for the purpose of the record, may I respectfully inquire as to whether arrangement of the attorneys is acceptable to the defendants that each attorney would represent.

JUSTICE RADER: Mr. Boyer, Gordon, Schaeffer, Vasquez, you're going to be represented by Mr. Kaplan, is that satisfactory to each?

(Defendants reply.)

JUSTICE RADER: Yes each defendant said. Mr. Cannon, Freedmon, Kalb, Rodreguez, you're going to be represented by Mr. Schiffer, is this satisfactory to each of you?

(Defendants reply.)

JUSTICE RADER: Each of the defendants said it is.

JUSTICE RADER: Now, we need a Spanish interpreter. Is one in the court?

MR. MCGINLEY: They've sent for the interpreter.

JUDTICE RADER: We cannot start before the interpreter gets here.

(Discussion off the record.)

MR. KUH: I may ask for special participation on certain legal points.

JUSTICE RADER: Inasmuch as there is a change, we have got to straighten out the notices of appearance. I might say this: Mr. Kaplan, according to my schedule, the defendants Boyer, Gordon, Schaeffer and Vasquez, whom you represent, are charged with violation of Section 722, Section two and three.

MR. KAPLAN: That's right.

JUSTICE RADER: Now, Mr. Schiffer, the remaining defendants, Cannon, Freedmon, Kalb, and Rodreguez - -

MR. MCGINLEY: That Rodreguez is Gonzales.

JUSTICE RADER: Rodrequez, Gonzales, which? Which is the way it is charged?

MR. MCGINLEY: It is charged Eleuterio Gonzales.

JUSTICE RADER: The Court on its' own

motion will move that the complaint, each and every one of these complaints, be amended. So enter the name Gonzales, Eleuterio. It appears as 'Aruffio Rodreguez Gonzales!

MR. MCGINLEY: Your Honor, Mr. Kaplan in spelling out the names of the defendants, I believe, spelled Antonio Basquez.

JUSTICE RADER: It's Vasquez.

MR. KAPLAN: I'm sorry, I had a B, it's with a V.

JUSTICE RADER: Will you listen this time so we can get the correct notices of appearance.

(Discussion off the record.)

MR. MCGINLEY: Perhaps, in the absence of the interpreter, I might make a statement about the trial memorandum that counsel has submitted to the Court.

JUSTICE RADER: As soon as we get the proper notices of appearance. Mr. McGinley, if you wish to make a statement with regard to the memorandum, you may.

MR. MCGINLEY: Thank you, Your Honor. I first became aware of a memorandum this morning when counselat the first call of the case in the calendar part mentioned to Your Honor he had a trial memorandum. He did not offer a copy of that memorandum to the District Attorney. At that time when the papers were brought up here this morning, the court papers and the memorandum, I assume, it became part of the court papers, since it was given to the Court, were laid on my desk here, I picked up the memorandum and started perusing them. I got to the second or third page and Mr. Kuh was also perusing it when Mr. Schiffer said that we had better not read any further, he didn't think we should have the benefit of the memorandum. We were prepared and are prepared now, on due diligence--with due diligence to present cases which have held the people have the right to see any trial memoranda that are given to the court by the defense counsel. Be that as it may, I wish the record to reflect all we had the benefit of looking at is the first couple of pages of counsel's trial memorandum.

MR. SCHIFFER: Iwant to correct Mr. McGinley. First of all, Mr. Kuh had read to page nine. I told Mr. Kuh not that he wasn't entitled, I said he was taking unfair advantage in reading this in this respect, Your Honor, that the document was presented to the Court and it's my experience a trial memoranda is for the guidence of the Court.

It disclosed the tactics. I offered Mr. Kuh the opportunity to exchange trial memoranda. He said he doesn't have one. If it's a major issue, it's something else. I feel, Your Honor, that thisis strictly for the guidence of the Court, it discloses our tactics and view of the case. We have had no such benefit from Mr. Kuh and consequently I don't think that there is any reason - - -

JUSTICE RADER: I know of no legal impediment in the way of having the opposing side peruse and look and study the trial memoranda after the trial begins. Then, of course, the problem is present if the people were to demand a copy of the memorandum and the defense were to say we do not have a copy available for you, in which event I'm frank to state that if the District Attorney wished to look at the trial memoranda, I will show it. I feel it would aid in the trial of this case; it would prejudice no side. I have read the trial memorandum myself, I find nothing in it which cannot or should not be revealed to both sides. I do think that counsel shares my view in that that could possibly c prejudice the people's case or the defendant's case. It would be my suggestion to facilitate the trial, that a copy be turned - be furnished. If the defense feels that it does not want to or has no such copy, I think, the copy available - -

MR. KAPLAN: May I say, I don't wish to presume any further or belabor this, but, since the people brought it up, may I say this? If the memoranda were one of law and clearly marked Memorandum of Law, that it had merely cases, citations, I would say I would agree with the Court. However, as a bill of particular does not necessitate the giving of witnesses and evidence to the other side, this outlines tactics and outlines the strategy, clearly marked, Your Honor, Trial Memoranda, which would enclude strategy and tactics to aid the Court. So the witnesses would go on, the Court would understand, roughly, what the witnesses were going to say. In view of that, only because of that reason it was not a memorandum of law, it actually put forth tactics and strategy of the defense and further view of the fact, Your Honor, that the people had none to exchange with us. If they did have, of course there would be no problem. It's for that reason my objection be just noted for the record.

JUSTICE RADER: Might I say this, in my perusal of the memorandum, it sited considerable amount of law, considerable amount of fact have been presented in this memorandum. I do feel all of this is going to be presented upon the evidence. I find nothing in here that might be accorded to be of vital importance to the strategy or trial tactics and I for one feel that a trial is not a contest. A trial is a search for the truth and in that view, I think, that anything that aids either side in the presentation of the truth or his idea or facet what the truth truly is, should be supplied freely. The federal courts has no such thing. The federal courts almost open each others file to you under the law.

(Discussion off the record.)

JUSTICE RADER: Now, of course, I have never had a trial memorandum on part of the people.

MR. MCGINLEY: Your Honor, if counsel requires a Quid Pro Quo giving us his memorandum, may I mention he was supplied with several subpoenas, several peace officers not named. The people go to considerable difficulty to have these peace officers here in court.

JUSTICE RADER: May I say this, that the subpoenas were issued after an application by counsel for the defendant. I think you raised the question of subpoenas at the last appearance. I think this was last Monday.

MR. SCHIFFER: We indicated we would subpoena a number - - -

JUSTICE RADER: I indicated you would receive the assistance of the Court.

MR. KAPLAN: We did not receive any assistance from the District Attorney's office. We encountered considerable difficulty.

JUSTICE RADER: I'm not looking for a Quid Pro Quo. The trial of the cases will be benefitted by the open presentation of all the facts in the case without attempting hide or unduly disguise what is intended to do and I find that there will be no difficulty or embarrassment to the defense if the memorandum is presented to the people and if you're not willing to do it, I'm going to.

MR. SCHIFFER: Your Honor, I'm perfectly willing to furnish Mr. McGinley with a copy, and, Your Honor, I merely want to say what Your Honor said before concerning a search for the truth is something I holy subscribe and hope Mr. Kuh and Mr. McGinley will remember when we attempt to offer of a substantial nature concerning the circumstances of this matter which include the testimony of Mr. Birns and Mr. Gribetz and certain others.

JUSTICE RADER: Well, I am not going to,

at this time, at least until I have heard all of the evidence, make any indication as to what I'm going to do with regard to further applications for subpoena or what I will do with regard to offers of certain line of testimony. Of course you must understand I may not and I will not hinder or proscribe the people or the defense with presentation of any argument with respect to any offers of testimony. Of course I would give the argument full consideration and I will base my decision only upon the applicable law and not upon any Quid Pro Quo, what has taken place before.

(Interpreter now present.)

JUSTICE RADER: Do we have the interpreter here now?

MR. INTERPRETER: Yes.

JUSTICE RADER: You may proceed.

MR. KAPLAN: May It please the Court, just before we proceed, may I say this? Your Honor, I'm in a bit of a dither as to 1220. Now the people are proceeding in some of these cases with violation of Section 1220, which to my understanding is a traffic infraction. It doesn't reach the stage of a misdemeanor. However, the body of the complaint - - -

JUSTICE RADER: There are some traffic violations that are.

MR. KAPLAN: If I'm wrong - - -

JUSTICE RADER: Let's find out whether this one is a misdemeanor or not. 1220.

MR. MCGINLEY: Your Honor, the people will be quick to concede 1220 is not a misdemeanor.

MR. KAPLAN: Now, in view of that, Your Honor, the body of the complaint, that portion of the complaint, the affidavit of the people must prove - - - starts off witha misdemeanor and certainly contains the elements of a misdemeanor. As a matter of fact, a misdemeanor under, I think, 1437 is a misdemeanor. Now, what are the people going to prove, there was a traffic infraction here or going by the body of the complaint, which sets forth a misdemeanor and all the elements of a crime.

MR. MCGINLEY: The body of the complaint in substance spells out Section 1220 of the Vehicle and Traffic Law, that's all the people are going to attempt.

MR. KAPLAN: It does not spell out 1220. It doesn't come anywhere near 1220. 1220 is completely different from the body of the complaint.

MR. MCGINLEY: The people will gladly invite the Court's inspection.

JUSTICE RADER: Section 1220A of the Vehicle and Traffic Law reads or deals with the Throwing of refuse on a highway and adjacent lands. " No person shall throw, dump,deposit or place,or cause to be thrown, dumped, deposited or placed upon any highway, or within the limits of the right of way of such highway, or upon private lands adjacent thereto, any refuse, trash, garbage, rubbish, litter or any nauseous or offensive matter."

MR. KAPLAN: B is not applicable.

JUSTICE RADER: The Court after reading the section and the complaint will on its' own motion, everybody have a copy of the complaint, move to amend the complaint, begining with the word Misdemeanor. Will strike out the word misdemeanor and in its place, will substitute the words, " Did violate the Vehicle and Traffic Law, Section 1220 thereof." That is the new matter and then it continues on as typed, " In that they did while acting in concert and together unlawfully, willfully and intentionally threw into the street and roadway from a truck driven by the defendant Cannon broken bedsprings, old mattressess, wooden boxes, pieces of metal garbage and other rubbish," and the rest of the type written matter is to be eliminated.

MR. KAPLAN: After the word rubbish everything else is out?

JUSTICE RADER: That's right. Now, as amended by the Court, either side have anything further with regard to this complaint and its' wording?

MR. SCHIFFER: Well, Your Honor, my objection at this point is a little more complex. It is that these people were arrested for violating a law that had been repealed, then an amendment was made to charge a law - - - -

JUSTICE RADER: We are not at that point yet. We are merely at the question of proper wording of the complaint with respect to 1220. Now, I at this time ask whether any party has anything further with regard to the wording of the complaint? Now, that was Mr. Kaplan's precise objection, saying it did not charge 1220. Now, the Court on its' own motion has amended the reading so it might in the Court's opinion correctly charge 1220. Now, is there any further objection with regard to that ietem, from that item alone?

MR. SCHIFFER: No, Your Honor.

MR. KAPLNA: Well, Your Honor, of course a technical objection. The fact the word street remains. I assume Your Honor wrote street and roadway from a truck and so forth, that's in the complaint. The word street remains, Judge?

JUSTICE RADER: Yes, certainly.

MR. KAPLAN: Well, my understanding is that the 1220, I don't want to be the prosecutor. 1220 doesn't mention street. As a matter of fact it merely says highway. I assume that is not a street.

JUSTICE RADER: We are now dealing with cermantics. I do believe that the District Attorney has a right to word his complaint as broad as it deems possible and whether or not it's applicable is a question of proof to be argued in presentation. Is there anything further with regard to wording the complaint? Nothing further, you may proceed then.

MR. KAPLAN: May we voice an objection to his amendment just for the record?

MR. SCHIFFER: That is what I was stating before.

JUSTICE RADER: You wish to object to its amendment?

MR. KAPLAN: Yes.

MR. SCHIFFER: Yes.

JUSTICE RADER: Objection overruled.

MR. KAPLAN: Respectfully except.

MR. SCHIFFER: Exception.

MR. MCGINLEY: If the Court and Counsel are adament in having the complaint amended to read highway instead of street, the people are so ameanable.

JUSTICE RADER: So we may allay any fears on the part of any party here, the Court in its' use of language and the understanding that it has in the use of language by others, finds that in the everyday use of the vocabulary, the word street, roadway and highway are almost synonymous.

MR. KAPLAN: Very well, Your Honor.

MR. MCGINLEY: The people are ready, call Patrolman Brown, please.

MR. KAPLAN: Could the witnesses be excluded other then the one testifying?

JUSTICE RADER: All right. All witnesses shall be excused. Does the defense have any witnesses other then the defendants themselves?

MR. KAPLAN: Well, at this point, Your Honor, we have the defendants themselves. Like it has been suggested, we have subpoenaed as the trial progresses. What we hope to do - - -

JUSTICE RADER: My purpose merely is to exclude all witnesses whether they are defendants or - -

MR. KAPLAN: Mr. 'Kaplowitz', he was subpoenaed by us.

JUSTICE RADER: All right, all witnesses are to be excused. Be it understood now, gentlemen, if any witness sits in court during the period of which testimony is given, he shall be disqualified.

MR. KAPLAN: Yes, Your Honor.

MR. MCGINLEY: Yes, Your Honor. Patrolman Brown.

WALTER M. BROWN, Patrolman, shield number 6992, New York City Police Department, attached to the 5th Precinct, being called as a witness on behalf of the people, being first duly sworn, testified as follows:

JUSTICE RADER: Name, shield number and assignment?

THE WITNESS: Patrolman Walter M. Brown, 6992, attached to the 5th Precinct.

DIRECT EXAMINATION BY MR. MCGINLEY:

Q Officer, on - - -

JUSTICE RADER: One moment. What is your name?

THE WITNESS: Walter M. Brown.

JUSTICE RADER: Are you a patrolman?

THE WITNESS: I am a patrolman.

JUSTICE RADER: Proceed.

Q Officer, on 21st of August, 1963, were you on duty that day?

A I was.

Q What were your hours?

A Eight A.M. to Four P.M.

Q At about two oclock in the afternoon, where were you?

A In the vicinity of Eldridge and Stanton Streets.

Q Is that in New York County?

A That is.

Q Please tell us what you saw and did that afternoon.

A At Eldridge and Stanton Street there was a truck moving north on Eldridge Street, loaded with different types of rubbish and garbage.

MR. KAPLAN: I object to that, that generic term.

JUSTICE RADER: Sustained.

MR. MCGINLEY: May I have this picture marked People's 1 for Identification, Your Honor?

JUSTICE RADER: So marked.

(So marked.)

(Shown to defense counsels.)

Q Officer, I show you People's Exhibit 1 for Identification and ask you if you ever seen that, what the picture depicts before?

A Yes.

Q Is that a fair and accurate representation of the truck you just mentioned to the court?

A Yes.

Q As it existed on the day, on August 21st?

A Yes.

MR. MCGINLEY: I offer the picture as People's Exhibit 1.

JUSTICE RADER: At the time you testified you saw this truck?

THE WITNESS: No, Your Honor. It has considerably less rubbish in the back at the time the picture was taken.

MR. KAPLAN: It has less or more or any deviation what is a true representation as the officer remembers, then I object to its being introduced.

MR. MCGINLEY: All I'm offering it for is whether it depicts the particular truck the officer is describing and the contents of the truck and whether it is more or less, I think, in fact it's beneficial to the defendants.

JUSTICE RADER: Well, strictly speaking, it does not fairly represent the condition of the truck as I understand at the time of two P.M.

MR. MCGINLEY: Only with respect to the amount of materials inside the truck.

JUSTICE RADER: That's true. For that reason - - -

MR. KAPLAN: May I remind the District Attorney if there were nothing in the truck, then none of us would be here to begin with, it's all important.

JUSTICE RADER: The objection is sustained.

Q Officer, will you describe to the Court this particular truck that you saw a little after two oclock on the 21st of August?

JUSTICE RADER: You say you saw a truck with a load of material?

THE WITNESS: Yes, Sir, Your Honor.

JUSTICE RADER: Now, if you want - - -

MR. MCGINLEY: I've asked the officer to describe what he saw about the truck.

Q Did you see the truck and can you describe the truck to us?

A The truck was a red body rack, it had materials in it that were picked up from - - - - -

MR. KAPLAN: I object.

JUSTICE RADER: Strike it out.

Q What materials did you see in the truck?

A Mattresses, springs, wooden doors - -

JUSTICE RADER: It contained you say mattresses, one mattress?

THE WITNESS: No, Your Honor, more then one.

JUSTICE RADER: Mattresses, bedsprings, did you say that?

THE WITNESS: Yes, Your Honor, I did.

JUSTICE RADER: Did you use the word doors?

THE WITNESS: Yes, Your Honor, I did.

JUSTICE RADER: Anything else?

THE WITNESS: There was a live rat on the side of the truck in a cage.

JUSTICE RADER: Anything else?

THE WITNESS: The truck belonged to 'Perry' trucking.

MR. KAPLAN: Object. Move to strike it out.

JUSTICE RADER: Sustained. Not responsive. What did it contain? You've already told us it contained mattresses, bedsprings, doors, a live rat in a cage on the side of the truck. Now, so that you might apply yourself more, specifically, we are trying to find out exactly what was in the truck, what the truck was carrying.

THE WITNESS: Your Honor, at that time I could not examine the specific materials that were inside.

JUSTICE RADER: You've made your answer?

THE WITNESS: That's right.

JUSTICE RADER: Were these materials that you described, the mattresses, bedsprings and doors, were they new or old, were theyshiny new or rusty, can you tell us that?

THE WITNESS: They appeared to be old, Your Honor.

JUSTICE RADER: Proceed.

Q When you saw this truck, officer, what did you do?

A JUSTICE RADER: May I ask this before we leave the truck? Were there any people on the truck?

MR. MCGINLEY: I haven't left the truck yet, I was just before - -

JUSTICE RADER: All right.

Q What did you do when you saw the truck?

JUSTICE RADER: Withdrawn.

A The truck went north, I just watched the truck, it went north on Eldridge Street and right to Stanton Street and it parked approximately in front of 163 Allen Street. It turned right on Allen Street from Stanton.

Q Now, Officer, at the time you first saw the truck, did you see anyone in it?

A Just the driver and,I believe, someone right next to the driver. That's when I first saw the truck.

Q Where were they, in the cab of the truck?

A In the cab of the truck, yes, Sir.

Q Do you see any of those people in the courtroom now?

A Yes, I do.

Q Would you point them out?

A The driver sitting right over there in the second row.

JUSTICE RADER: Who is it?

THE WITNESS: The second row.

JUSTICE RADER: The first, second?

THE WITNESS: The first man in the second row from the left.

Q Mr. Cannon was driving the truck?

A Yes, that's correct.

Q Whom else did you see?

A The first time I saw the truck, I do not know who was sitting beside.

Q Now, take us to the pont where the truck turned on Eldridge Street.

A When the truck parked in front of 163, at that time the truck was - - Mr. Cannon left the truck and a small group was milling about the truck. Then then boarded the truck.

MR. KAPLAN: I object to the conclusion a small group.

JUSTICE RADER: A small group, a number of people, a group of people?

THE WITNESS: A small group of people.

JUSTICE RADER: Were milling around the truck?

THE WITNESS: Werestanding beside the truck.

Q Where were they milling?

A Standing beside the truck.

Q At what location?

A In front of approximately 163 Allen Street.

Q And, this small group of people, what did they do then?

A They then boarded the truck.

Q Now, do you see any of those people in the courtroom today?

A I do.

Q Who are they?

A The defenants Freedmon, Kalb, Gonzales.

JUSTICE RADER: Then they boarded the

truck. They were defendants who?

THE WITNESS: Freedmon, Kalb, and Gonzales.

MR. KAPLAN: Would the witness point them out?

THE WITNESS: Second man from the left, back row.

JUSTICE RADER: Freedmon.

THE WITNESS: That's Freedmon; the third man in the back row is Kalb, and the fourth man in the rear is Gonzales.

Q Now, Officer, what part of the truck did those defendants board?

A In the rack body area.

Q What happened then?

A They then proceeded to Rivington Street. They made a right on Rivington Street to Forsythe Street, right on Forsythe Street to East Houston Street and a left there to Lafayette Street, a left on Lafayette Street to the civic Center.

Q Now, when the truck made the left on Lafayette Street, what direction did it proceed?

A South.

Q Who was in the truck at that time?

A The people I described who boarded the truck at Allen Street.

JUSTICE RADER: May we stop for a moment so I can make sure we have this correct? Who was driving the truck?

THE WITNESS: Mr. Cannon.

JUSTICE RADER: Was there anyone seated beside him?

THE WITNESS: There may have been, Your Honor, I don't know.

JUSTICE RADER: In other words you don't know. Besides Mr. Cannon, then you definitely say that Freedmon, Kalb and Gonzales were in the body of the truck?

THE WITNESS: That's correct.

JUSTICE RADER: As distinguished from the cab?

THE WITNESS: That's correct.

JUSTICE RADER: May I ask this? At the time you saw this truck, was it partially loaded, fully loaded, overloaded?

THE WITNESS: I wouldn't say it was overloaded, Your Honor.

JUSTICE RADER: Was it fully loaded?

THE WITNESS: Approximately three-quarter.

JUSTICE RADER: How tall were the racks on the side?

THE WITNESS: The racks were about ten feet tall from the body of the truck.

JUSTICE RADER: And, from the bed of the truck, how far vertically did this material - - -

THE WITNESS: From six to seven feet.

JUSTICE RADER: Stand? In other words, was it - - am I to understand that the truck was loaded to a height of six to seven feet from the bed of the truck in its' entire body length to a distance of six to seven feet?

THE WITNESS: No, It wasn't the entire body length.

JUSTICE RADER: What portion?

THE WITNESS: It was uneven, it was piled up in the truck unevenly; it was not packed, it was just thrown. I presume it was thrown into the truck. I would say it was probably from half to three-quarters loaded to capacity.

JUSTICE RADER: Proceed.

Q Tell us what you did, what the truck did after the turn on to Lafayette Street.

A It proceeded south to the Municipal building. There it did not stop, there it continued south from Centre Street, Lafayette becomes Centre Street and then becomes Park Row and at about that point the truck stopped in Park

Row at the intersection with City Hall Plaza.

Q Now, whenthe truck stopped at the intersection of Park Row and City Hall Plaza, where were you?

A I was approximately 200 feet behind this truck.

Q What did you do then?

A I proceeded to a point where I was stopped by traffic and then I dismounted the car and walked up to the truck.

JUSTICE RADER: What do you call that?

THE WITNESS: City Hall Plaza.

Q Can you describe that particular area to His Honor as it appeared to you when you got out of the radio car?

A Well, traffic was backed up, I assume, because of the truck. It stopped in the roadway. There were an amount of pickets on the sidewalk at that location and there was a great deal of shouting.

MR. KAPLAN: I object, move to strike it out.

JUSTICE RADER: What portion.

MR. KAPLAN: A great deal of shouting.

MR. SCHIFFER: From assuming that the traffic, Your Honor, from the assumption that the traffic backed up because the truck was stopped in the roadway,all the way through, he has no - - he - - -

JUSTICE RADER: Let me - - as far as your objection, overruled.

MR. KAPLAN: Exception.

JUSTICE RADER: Do you have an objection?

MR. SCHIFFER: Yes, Your Honor.

JUSTICE RADER: What objection do you have?

MR. SCHIFFER: My objection is he started out by saying he assumed traffic backed up.

JUSTICE RADER: Strike out such portion which began with the word assumed in the witness' testimony and which described the backing up of traffic. In that respect your objection is sustained.

Q Officer, at this point you saw the truck stopped, was there a traffic light there?

A No.

Q Were there any cars or trucks or buses or any vehicular traffic in front of the truck at the point it stopped?

A No.

Q Now, when you got out of your radio car, tell us - - -

JUSTICE RADER: I think the Court will benefit by further description as to this area, as to whether the truck stopped at or abut City Hall or further down. As I take it, the juncture of Park Row and City Hall is about 200 or 300 feet south of the Municipal Building.

MR. MCGINLEY: Yes, Your Honor, the officer testified it didn't stop at the Municipal Building.

JUSTICE RADER: That's correct. Is that stipulated that the area known as Park Row and City Hall Plaza is - - withdrawn. The Court will take judicial notice that the juncture Park Row and City Hall is abut 200 feet approximately south of the Municipal Building.

THE WITNESS: If that junction is 200 feet south of City Hall, then my estimate of the distance I was behind this truck is less then 200 feet.

JUSTICE RADER: Well, are you familiar with the neighborhood?

THE WITNESS: Fairly, yes.

JUSTICE RADER: How far south of the Municipal Building would you say is the juncture of Park Row and City Hall Plaza?

THE WITNESS: Well, I'm not a very good judge picking distance. I would say 400 feet.

MR. MCGINLEY: May I interject here? I think the confusion - - I think the officer misunderstood Your Honor. You said the intersection that we are speaking about 200 feet south of the Municipal Building, I think, the officer thought you meant south of City Hall.

THE WITNESS: No. The reason why I bring that up, I said I was 200 feet behind, approximately 200 feet behind the truck when it stopped. According to the way Your Honor has it here, I would be up at the Municipal Building.

JUSTICE RADER: You were at the Municipal Building?

THE WITNESS: Not at the time the truck stopped.

JUSTICE RADER: Where were you?

THE WITNESS: I was approximately half-way between the junction where we are referring to and the Municipal Building.

JUSTICE RADER: I think I should stand corrected. I think the juncture I have in mind is west of the Municipal Building, not south.

MR. KAPLAN: May it please the Court, if the people will stipulate as to the accuracy of this blown up diagram of the City Hall area, which Your Honor refers to, it might help everybody. Your Honor want to look at it?

MR. SCHIFFER: Your Honor, that's blown up from the City planning commission, February 1, 1963 sectional map of New York.

JUSTICE RADER: It may go in as an exhibit.

MR. KAPLAN: Then it can be referred to constantly.

JUSTICE RADER: Then it might be a benefit to everybody if the witness marked off where he was. Any objection?

MR. MCGINLEY: No objection.

MR. KAPLAN: We'll offer it as a Court's exhibit or the defendant's exhibit?

JUSTICE RADER: If it is a Court's exhibit, the Court will be bound to keep it.

MR. KAPLAN: Defendant's 1?

JUSTICE RADER: Defendant's A in Evidence. So marked.

(So marked.)

JUSTICE RADER: The Court will now recess for lunch.

(The above is a correct transcript of the minutes taken inthis case.)

Harold M Crosby

Official Court Reporter

196-20M-702586(64) 373

COURT REPORTER'S MINUTES

Criminal Court of the City of New York

Part 1C-1, County of New York

THE PEOPLE OF THE STATE OF NEW YORK
on the complaint of
Officer Walter M. Brown, et. al
vs
GEO. CANNON - ANTONIO VASQUEZ
JEFFREY KALB - STEPHEN GORDON
ALEX BOYER - JOHN SCHAEFER.
ELEUT. GONZALES - JOEL FREEDMAN
Defendants.

BEFORE
Hon. George S. Rader,
Judge.

September 3rd, 1963. 19

CHARGE Sec. 1220, VTL and Sec. 722, Subd. 2, 3 & 4, P.L.

TRIAL (or) HEARING Trial

APPEARANCES:
For the People Patrick M. McGinley, A.D.A. N. Y. County.
For the Defense George Schiffer, Esq.
Kenneth Kaplan, Esq.

WITNESS	DIRECT	CROSS	RE-DIRECT	RE-CROSS
Patrolman Walter M. Brown	12			
Patrolman George Dillingham	74			

Frederick Weinberg,
Official Court Reporter

CRIMINAL COURT OF THE CITY OF NEW YORK

PART 1C-1 - County of N. Y.

: :

* *

PEOPLE OF THE STATE OF NEW YORK *
on complaint of * DOCKET NO.
*B-6296 to B-6299 &
Officer Walter M. Brown *C-14230 to C-14233
*& C-14235 to C-14237
-versus- *
* CHARGES:
GEORGE CANNON - ANTONIO VASQUEZ *Vio. of Vehicle and
JEFFREY KALB - STEPHAN GORDON *Traffic Law, 1220 &
ELEUTERIO GONZALES- JOEL FREEDMAN *Disorderly Conduct
ALEXANDER BOYER -JOHN SCHAEFFER, *722, Subd. 2, 3 & 4.
Defendants. *

* *

New York, N. Y.
Date: September 3rd, 1963.
BEFORE: HONORABLE GEORGE S. RADER
Bridgeman: Max Diamond.

APPEARANCES:

Patrick M. McGinley, Asst. Dist. Atty., N.Y. County, for the People.

GEORGE SCHIFFER, ESq., 40 East 49th St., N. Y. City, for Defendants, Cannon, Gonzales, Kalb & Freedman.

Kenneth Kaplan, Esq., 37 Wall Street, N. Y. City, for Defendants Boyer, Vasquez, Gordon and Schaeffer.

Defendants all Present.

(Official Interpreter, Mr. Gonima Present.)

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F. WEINBERG
COURT REPORTER

COURT OFFICER: Docket Numbers B6296 to B 6299, C14230 to C14233 and C14235 to C14237, George Cannon, Antonio Vasquez , Jeffrey Kalb, Stephan Gordon, Eleuterio Gonzales, Joel Freedman, Alexander BOYER and Jon Schaefer, charged with violation of Section 1220 of the Vehicle and Traffic Law, and Disorderly Conduct, 722, Subdivisions 2, 3 and 4.

This is a continued case.

MR. SMITH: I represent Mr. Kaplowitz, my name is Daniel M. Smith. I appear for Mr. Hyman M. Kaplowitz, 233 Broadway. I would like to have the subpoena quashed, if at all possible. We feel Mr. Kaplowitz has no relevance to this proceeding. His testimony cannot in any way, shape, or form--

THE COURT: I wouldn't like you to make this motion in the ab~~s~~sence of one defense Counsel. There is another defense counsel. When he comes in you can make your motion.

MR. SMITH: Thank you.

(Mr. Kaplan now appears)

THE COURT: Are the defendants ready?

MR. SCHIFFER: The defendants are ready.

MR. MC GINLEY: The People are ready.

THE COURT: There is an application on behalf of Mr. Kaplowitz, for the benefit of all the attorneys involved.

MR. SMITH: My name is Phillip M. Smith. I represent Hyman Kaplowitz of 233 Broadway.

THE COURT: What is your application?

MR. SMITH: My application is that the Court quash the subpoena for Mr. Kaplowitz, as a witness for this trial, and the reason I would ask that is because Mr. Kaplowitz has no knowledge of any of the facts related to this trial. He was not present on the date, or at the time this material was dumped at City Hall and he knows nothing about this thing and it is clear that he cannot, in any way give any relevant testimony at this trial.

THE COURT: Who subpoenaed him?

MR. SMITH: The defendant.

THE COURT: Which one? There are two groups.

MR. SCHIFFER: He was subpoenaed on behalf of all of them.

THE COURT: Do you want to be heard on this, Mr. Schiffer? What is the purpose of Mr. Kaplowitz' presence here?

MR. SCHIFFER: Your Honor, Mr. Kaplowitz is the landlord of these buildings and a number of others in a similar condition. We expect him to testify concerning the condition of the buildings, concerning dealings, in the past, with some of the defendants concerning remedial steps to be taken, and concerning the protests which were made to the Cit partments and to present testimony at when defendants - when the events occurred which are the basis of this case the defendants were attempting to petition for relief from their grievances and to bring them to the attention of the respective Commissioners in order to secure action in connection with the conditions in Mr. Kaplowitz' buildings.

THE COURT: This, more or less came out in the midst of the argument which the Court heard immediately prior to the time we adjourned last Thursday. When we adjourned at that time I reserved decision on the problem that was raised, at that time, by Mr. Kuh and this motion to quash is mrely corrolary to the other motion which I believe - if I remember correctly - the problem there was that the defense had requested that Mr. Birns - Commissioner Birns and Deputy Commissioner Gribetz be held on call to appear here at any time it would be necessary for them to testify.

We inquired into the subject, upon which the defense expected them to testify and I believe that the matter which you stated you hoped to prove through Commissioner Birns and Deputy Commissioner Gribetz is wholly along the same line of that which you seek to obtain and present through the subpoenaed witness, Mr. Kaplowitz.

MR. SCHIFFER: May I be heard on that?

THE COURT: Yes.

MR. SCHIFFER: There is a distinction with respect to Commissioner Birns/ I think Commissioner Birns would like to and would welcome an opportunity to testify and I am further going to be clear on this point that Commissioner Birns is not to be called in the sense that he is being, in any way, inconvenienced.

We also asked the Department to gather some of their records which they have already done and there is a complainant and no inconvenience and that led me to believe he would welcome an opportunity to testify.

With respect to Commissioner Gribets there is testimony that he can give concerning a specific conference with some of the defendants which bears directly on the issue of intent in a very closely correlated way since they were discussing their grievances and one of the subjects discussed, at that conference, involved the necessity for producing specific evidence of specific conditions. So that, your Honor, I think that there is a definite distinction; that is to say, Commissioner Birns would certainly testify as to more general matters although he also is familiar with this particulat situation, and Commissioner Gribetz would testify concerning specific matters.

THE COURT: If I recall correctly, in looking at all the three complaints which were filed by the People against all the defendants, they are all charged that, at a specific time in City Hall Plaza, in Park Row, namely on August 21st at two forty P. M., at City Hall Plaza, Park Row, - the same thing for all of them - certain events took place which the People claim violated specific laws. It is the beliwf of this Court and I make this as a pronouncement so that I may not be misunderstood with regard to the position of the defendants - the Court, as it has done before, wishes to plainly state that the defendants have an inalienable right to petition for redress at all times. But that is not within the confines of the complaints herein. The Court also recognizes that it may be your defense, or a part of your defense to show that the defendants were exercising such right, but to attempt to prove that they are right, in this case, or to justify that right by bringing in the witnesses that you asked to bring in, namely, Birns, Gribetz and Kaplowitz, is to clutter up this record on a collateral issue which will be of no assistance whatsoever to the Court in determining the innocence or guilt of an activity which took place at a specific time, in a specific place, away from the alleged site of these buildings and unconnected in any way with these buildings.

The proof that is sought to be obtained from these three proposed witnesses is, in the mind of the Court, too remote to give it any assistance. It may relate to motive - but, as to motive, it is a motive which the Court, at this time, has said that the defendants were justified in seeking redress for, and if that was your motive the Court has already ruled upon that.

Therefore, the Court will not accept any testimony and I take it for granted that the defendants offer such testimony, and the Court hereby quashes the subpoena for Mr. Kaplowitz and if - Has there been a subpoena for Commissioner Birns and Deputy Commissioner Gribetz?

MR. MC GINLEY: I don't believe subpoenaes have been issued. However, they have been instructed to be on call and they are now away from their duties--

MR. SCHIFFER: That is not--

MR. MC GINLEY: I haven't interrupted Counsellor when he made his statement.

THE COURT: Let me say this: If that is the testimony that you hope to adduce in behalf of the defendants from Commissioner Birns and Deputy Commissioner Gribetz, this Court now takes it that you offer to make such proof and the Court rejects such offer. And, on that basis it will not be necessary for them to make any appearance.

MR. KAPLAN: May I be heard just a moment, your Honor?

MR. MC GINLEY: Inasmuch as they were at the phone for a call, do I understand that they will not have to appear and that they will not have to be subject to the call of this Court for this trial?

THE COURT: Yes, and if there is a subpoena I will want to know the grounds, and unless they are further instructed by the Court it is not necessary for them to be here.

MR. SCHIFFER: In the case of Deputy Commissioner Gribetz, at a conference he told one of these men to bring him the stuff, or the complainant and, certainly, if we put Mr. Gribetz on--

THE COURT: ARe they charged with bringing in certain matter to him, so that we may understand your contention. There is a charge of bringing the material there and, as

I understand the complaint - and I read it, I think - "Did intentionally throw into the street and roadways" certain items.

MR. KAPLAN: But the word "intentional" can be certainly misconstrued. Although we can show that they were told to bring the stuff to the Commissioner's office and they did so, rather than throw it.

THE COURT: You mean to tell me there was an intent to take this truckload - that the defense is going to show that they intended to take this truckload of material into the Municipal Building and cart it up to the offices?

MR. KAPLAN: Yes; cart it up to the Commissioner's office.

THE COURT: In view of my ruling we will proceed from there on.

MR. SCHIFFER: May I respectfully take exception?

THE COURT: Yes, each of the defendants has an exception.

MR. KAPLAN: Would your Honor change your ruling as to Mr. Grabetz at least?

THE COURT: No, Sir.

MR. SCHIFFER: If your Honor will permit, at the appropriate time can we make a more detailed offer of proof?

THE COURT: Yes, I think you should. All right, proceed.

MR. MC GINLEY: Your Honor, I believe that when we adjourned on the last date that Patrolman Brown was on the stand, being cross-examined.

THE COURT: Mr. Schiffer was cross-examining Patrolman Brown. (Addressing Patrolman Brown) You are still under oath.

PATROLMAN WALTER M. BROWN having been duly recalled, testified as follows:

THE COURT: What is your name, Shield Number and assignment.

OFFICER BROWN: Walter M. Brown, Shield Number 6942, assigned to the Fifth Precinct.

MR. KAPLAN: With the kind permission of the Court, may I just continue with some cross-examination in Mr. Schiffer's stead, for a short while?

THE COURT: Let Mr. Schiffer complete his examination. I don't think it is proper to interrupt and shift from one to another. When Mr. Schiffer completes his examination, if you want to ask any more questions I certainly will permit you to continue with your cross-examination.

BY MR. SCHIFFER:

Q Officer Brown, your testimony included--?

THE COURT: Do you have your minutes?

MR. SCHIFFER: I do.

THE COURT: So as to enable you to question with continuity?

MR. SCHIFFER: Yes, your Honor. I will attempt to do so.

BY MR. SCHIFFER: (CONT'G)

Q Officer Brown, you testified concerning the fact that some of these defendants were seenby you in the act of and you used the word "throwing" some of the contents of the truck from the right side of the truck. I mention this merely to refresh your recollection as to your previous testimony: Now, Patrolman Brown, some of that material included, for example, a mattress, is that correct?

A Well, a mattress, yes.

THE COURT: Excuse me - When you talk of "material" do you refer to some of the material on the truck, or some of the material that was in the street?

MR. SCHIFFER: I am referring to some of the material which Patrolman Brown testified he saw - and he used the word "thrown" out of the truck.

THE COURT: Did you see a mattress being thrown?

OFFICER BROWN: No, Sir. I saw some-- When you say "mattress", do you mean a bed mattress?

THE COURT: Yes; is that what you

mean? Is that correct, Mr. Schiffer?

MR. SCHIFFER: Yes, that's correct.

OFFICER BROWN: No.

Q Did you see any springs being thrown?

A Yes.

Q You did?

A Yes.

Q Now, Officer Brown, you testified here that the sides of the truck were approximately ten feet high, is that correct?

A Yes.

Q Now, Officer Brown, could you distinguish for me between throwing and unloading a bed spring, which is a large item, over a ten foot high side of a truck.

MR. MC GINLEY: Objection, your Honor. The Officer has already testified that when he saw these things being thrown he was then away from the truck, from the rear of the truck and he didn't have to look over that ten feet.

THE COURT: May I ask a question, for the Court's own edification. This is a rack truck?

MR. SCHIFFER: A rack-bodied truck.

THE COURT: Is this photograph in evidence?

MR. SCHIFFER: (Exhibiting photograph to Court) Yes; it has solid sides.

THE COURT: It does have solid sides? Will Counsel approach the bench, please?

(Discussion at the bench among all counsel and Mr. McGinley)

BY MR. SCHIFFER: (CONT'G)

Q Patrolman Brown, I show you People's Exhibit 1, in evidence. I gather that when you said that the top of the truck's sides was ten feet high, you meant ten feet from the ground?

THE COURT: What did you mean?

Q Of, what did you mean?

THE COURT: Did you mean that the height of the truck was ten feet from the ground? Look at the picture. Or, did you mean that the sides of the body, from the bed of the truck, meaning the floor of the body of the truck, to the top of the sides, was ten feet? Which did you mean, by "ten feet"?

OFFICER BROWN: When I said it was ten feet high I meant the body - from the bottom of the truck to the top of the rack.

THE COURT: Will you point that out on the exhibit?

OFFICER BROWN: From here to here. (Indicating on People's Exhibit 1)

THE COURT: You say that is ten feet?

OFFICER BROWN: That is what - When I said "ten feet" that is what I referred to.

THE COURT: Look at this now: Do you still say it is ten feet high, referring to the top of the --

OFFICER BROWN: Your Honor, to get a better estimate of that I would probably have to stand in the truck and measure it from my own height.

THE COURT: Well, all right. Go ahead.

BY MR. SCHIFFER: (CONT'G)

Q Let's go back now to the question, whatever the height of the walls from the bed of the truck to the top of those walls of the truck - you used the word "throw"- referring to the bed springs - throwing them over the side: Now, is it not a fact that anyone standing on the floor, the bed of the truck and lifting a bed spring would have to lift it, in any event, over his head to get it to the top of the side?

A If he were standing in the bed of the truck with nothing in the truck he would probably have to, but it was full of material at the time which would cut the height of the sides.

Q I would like to have you distinguish for me what, in your mind, the difference is.

THE COURT: Will you stand back, please? Stand behind the table.

MR. SCHIFFER: Surely. Excuse me, your Honor.

Q Would you distinguish for me what, in your mind the difference is between throwing a bed spring and unloading a bed spring in the circumstances that we have been discussing here?

MR. MC GINLEY: Objection, your Honor.

THE COURT: Sustained. It calls for the operation of the witness' mind.

Q Officer, in the circumstances that we have been discussing, is it not a fact that there is no distinction between throwing and unloading?

MR. MC GINLEY: Objection, your Honor.

THE COURT: Sustained.

Q Officer, when you saw this bed spring being thrown, would you describe for us the trajectory of the bed spring, from the top of the truck side, was it an arching throw outward, or simply falling over the side?

MR. MC GINLEY: I object to it. He is asking the Officer to testify as an expert regarding something being thrown.

THE COURT: I think the question, as phrased, is rather obscure. May I try to frame the question which I think will serve the purpose? You say that you saw a bed spring thrown - the word that you used - out of the truck?

OFFICER BROWN: Yes.

THE COURT: Was it thrown over one of the sides, or from the rear?

OFFICER BROWN: Over the side.

THE COURT: Now, when it was thrown, did you see the bed spring on the inside of the truck, or where was it when you first saw it?

OFFICER BROWN: Coming over the side.

THE COURT: Now, when it came over the side, what portion of it did you first see?

OFFICER BROWN: One of the ends first.

THE COURT: Was that end resting on top of the side of the truck, or was it clear of the side of the truck - the top of the side of the truck when you first saw it?

OFFICER BROWN: I don't recall, your Honor. I couldn't tell whether it was touching the top, or free of the truck.

THE COURT: Was it thrown in the same manner as a baseball would be thrown?

OFFICER BROWN: No, your Honor.

THE COURT: From the side of the truck - over the side of the truck? Was it coming over in that manner, like a baseball?

OFFICER BROWN: No, your Honor.

BY MR. SCHIFFER: (CONT'G)

Q Was it allowed to fall from the side of the truck to the street; is that what you mean by "throw"?

A I couldn't say. From that point where I was, I couldn't see what the defendants in the truck were doing - or how they were pushing it over the side.

THE COURT: Were they pushing it over or throwing it over?

OFFICER BROWN: Pushing it over.

THE COURT: You didn't see what was taking place on the inside of the truck, did you?

OFFICER BROWN: No, I didn't.

THE COURT: You couldn't tell us, on the inside of the truck, whether it was being thrown or being pushed?

MR. SCHIFFER: Your Honor, may I interject at this point - as to the position your Honor is speaking about--?

THE COURT: Denied.

MR. SCHIFFER: We are talking particularly about the--

THE COURT: Denied. As a matter of fact, you don't know whether it was being pushed off the side of the truck, or whether it was being thrown over the side of the truck?

OFFICER BROWN: Your Honor, I can say that, I don't believe, under normal circumstances, anybody was unloading--

THE COURT: We are asking what you saw. Now, when--

OFFICER BROWN: I saw--

THE COURT: When you used the word "thrown", you actually did not see anybody throw anything, did you?

OFFICER BROWN: I couldn't be certain how it got to the top of the truck.

THE COURT: You don't know whether it was thrown over, or whether it was pushed over, is that correct?

OFFICER BROWN: Correct.

BY MR. SCHIFFER: (CONT'G)

Q Or whether it was unloaded, Officer Brown?

THE COURT: May I ask one question: You recall it came over the side of the truck and not over the rear of the truck?

OFFICER BROWN: Correct.

BY MR. SCHIFFER:

Q Officer Brown, did you know --

MR. SCHIFFER: Excuse me. Withdrawn.

Q You testified that you saw these people commiting various acts as to which you testified?

A That's correct.

Q And then you placed some of them under arrest?

A Yes.

Q Now, did you know, at any time prior to the arrest whether any of the defendants intended, after unloading the truck, to remove the things that had been unloaded?

MR. MC GINLEY: Objection, your Honor.

THE COURT: Sustained.

Q Officer Brown, how much time elapsed between your seeing the material being unloaded from the truck and your arresting any of the defendants?

MR. MC GINLEY: Objection, your Honor.

THE COURT: Sustained. There is no testimony - the witness didn't say it was being unloaded.

Q How much time, Officer Brown, elapsed from the time that you arrived at the truck, got out of your car, to the time that you made your first arrest?

A Approximately five minutes, I would say.

Q During that time, the material continued to be removed from the truck?

A Part of that time, yes.

Q Did any of the defendants that you arrested have an opportunity to remove any of the material which was unloaded?

MR. MC GINLEY: Objection, your Honor.

THE COURT: Sustained.

Q Officer Brown, you testified that there were a number of policemen at various points about the truck. Were not all the defendants, during the period between your arrival at the truck and your first arrest, on the street?

A Were not all the policemen on the street?

Q No, no, no - all the defendants?

A Yes.

Q They were?

A Yes.

Q During the time that they were on the street, were they under arrest, or being placed under arrest?

A Not to my knowledge.

Q Which of the defendants were standing on the street without being under arrest, or in the custody of a police Officer, or being placed in the custody of a police officer?

MR. MC GINLEY: Objection, your Honor.

THE COURT: Sustained. Break that down into more than--

Q Which of the defendants--?

THE COURT: Break it down into individual questions.

Q Which of the defendants were on the street, during this particular time, and not under arrest?

MR. MC GINLEY: I object to the question unless counsellor states at which particular time he is speaking of.

Q During the --

THE COURT: Sustained.

Q During the time between your arrival at the truck and your first arrest, which of the defendants--

THE COURT: If any.

Q --were on the street and not under arrest?

A From the time of my arrival, to my first arrest, one of the defendants, at one point, in that time, dismounted from the truck and was on the street.

THE COURT: Which defendant?

OFFICER BROWN: Schaeffer.

THE COURT: Which one is Schaefer? Raise your hand.

DEFT. SCHAEFER: (Raising hand)

OFFICER BROWN: The third one from the left.

Q Did you see Mr. Schaefer subsequently being placed under arrest?

A He was arrested with the group.

THE COURT: You are not answering the question. The question was, "Did you see Mr. Schaefer being placed under arrest."?

OFFICER BROWN: No.

Q When Mr. Schaefer was on the street, did you observe what he was doing?

A Yes.

Q What was he doing?

A He got off the truck and went to the side door of the truck.

Q What did he do when he reached the side door of the truck?

THE COURT: You mean the driver's compartment?

OFFICER BROWN: No; into the rack. There is a door in the middle of the body.

Q When he reached that door, what did he do?

A He put his hands up and there was a sheet on the side - I don't know if it was a slogan or just exactly what was written on it but he was removing that.

Q What did he do? Did he succeed in removing it?

A No.

Q What kept him from removing it?

A The material, at that time, was then falling and it wasn't falling in any particular spot. As a matter of fact I thought Shaefer was going to get hit by the material.

THE COURT: Strike out what you thought. You say this happened while the material was coming over the side?

OFFICER BROWN: Yes.

Q What did Mr. Schaefer do?

A He fell down.

THE COURT: No; what did he do, when he came off the truck, in relation to the door in the body?

OFFICER BROWN: Trying to remove the sheet. I don't know what he was trying to do.

THE COURT: What sort of sheet?

OFFICER BROWN: It was on the side of the truck, tied on both ends. I think it had a slogan of some kind on it.

THE COURT: You mean a "sign", not a "sheet"?

OFFICER BROWN: A sign.

THE COURT: It was a cloth sign; is that what you are tying to tell us?

OFFICER BROWN: Yes.

Q Did you see him try to open the side door of the truck?

A I saw him remove the sheet and I saw him put his hands up. What he was doing--

Q You say you saw him--

THE COURT: Let him finish the answer. You say he came off the truck?

OFFICER BROWN: Yes.

THE COURT:" And he went toward the side of the truck?

OFFICER BROWN: Yes.

THE COURT: And removed the cloth sign?

OFFICER BROWN: Yes.

THE COURT: And that is what you testified to?

OFFICER BROWN: Yes. Sir. He put his hands up. What he was actually doing, I don't know.

Q You just testified he did not succeed in removing the cloth sign. Do you mean he removed it, or he put his hands under the cloth sign?

THE COURT: Did he remove the cloth sign?

OFFICER BROWN: He did not take the cloth sign off the truck.

THE COURT: Did he put his hands on the sign?

OFFICER BROWN: Yes.

THE COURT: What did he do with his hands on the sign; was he pulling it down, or pushing it up?

OFFICER BROWN: He put his hands under the sign.

THE COURT: And what did he do?

OFFICER BROWN: I don't know.

THE COURT: Then you didn't see what his hands were doing underneath the sign?

OFFICER BROWN: No, your Honor.

BY MR. SCHIFFER: (CONT'G.)

Q Was there, at that time, near him, another Police Officer?

A There were Police Officers there, yes.

Q How close was the closest Police Officer?

A At that particular time?

Q Yes.

A Three feet. There was a Police Officer three feet away.

Q There was a Police Officer three feet away from Mr. Schaefer as he had his hands under the sign, is that correct?

A That is correct.

Q Did that Police Officer, or any other Police Officer then take Mr. Schaefer into custody?

A Not to my knowledge.

Q You say Mr. Schaefer fell?

A Yes.

Q How did he come to fall down?

A He fell over the material.

THE COURT: Just a moment. You mean the material - the sign or the material that was off the truck?

OFFICER BROWN: Off the truck.

THE COURT: The debris?

OFFICER BROWN: The debris, yes.

THE COURT: All right.

Q Can you fix for us, the time interval, between the time you first saw Mr. Schaefer at the door, or at this point, and the time that Mr. Schaefer was removed from that position by a Police Officer?

A Thirty seconds.

Q Thirty seconds?

A Yes.

THE COURT: While you are thinking of your next question, I want to make certain of one thing: Are you sure you saw the defendant, Mr. Schaefer, come off the truck?

OFFICER BROWN: Yes, your Honor. It looked like he was coming out of the cab. I don't know where he came from off the truck.

THE COURT: Where was he the first time you saw him?

OFFICER BROWN: He was on the truck.

THE COURT: What part of the truck?

OFFICER BROWN: To the back of the truck.

THE COURTZ: You mean - when you say, "The back of the truck", what do you mean?

OFFICER BROWN: In the body of the truck.

THE COURT: You mean the body part of the truck?

OFFICER BROWN: Yes, Sir.

THE COURT: And then he - did you see him alight from the body part of the truck, or didn't you?

OFFICER BROWN: Not from the body part of the truck.

THE COURT: Do you know what part of the truck he alighted from, if any?

OFFICER BROWN: It appeared to me that he got off of the cab of the truck.

THE COURT: You didn't see him come out of the cab of the truck?

OFFICER BROWN: No, I didn't.

THE COURT: Then you actually don't know what portion, if any portion, of the truck he came from?

OFFICER BROWN: That is correct.

BY MR. SCHIFFER: (CONT'G)

Q You mentioned the fact that there were some Police cars in the immediate area of the place where the truck was parked, meaning by "immediate area", to the South of it, to the North of it, to the East of it, to the West of it; could You describe to us, with reference to the map, Defendant's Exhibit A, where the various police cars that you observed, came to a halt?

A I can only say where my car was. I don't know exactly where any other car was.

Q But there were other police cars?

A I know that, after I had placed the--

THE COURT: (Addressing Mr. Schiffer)

May I ask you to go back to your position to allow the Court Officer to do the necessary demonstrating?

MR. SCHIFFER: I am sorry, your Honor.

Q You do not know how many other Police cars there were?

A No.

Q All you know is that there were other Police cars?

A After I placed my prisoners under arrest, I know that there were other Police cars.

Q Did you know how many there were, at that time?

A No.

Q You do not know, when you arrived, how many there were?

A No.

Q They could have arrived before the arrest?

MR. MC GINLEY: Objection.

THE COURT: Objection sustained. He says he doesn't know and you are asking him to speculate as to when they arrived.

Q Now, Officer Brown, at approximately 1:30 -

MR. SCHIFFER: Withdrawn.

Q Officer Brown, there is a driveway across City Hall Park, is that correct?

A A street running through?

Q Well, a driveway, or a street, whatever you want to call it.

THE COURT: As you wish to enter City Hall Park with an automobile, or other vehicle, so as to approach the entrance to City Hall facilities you proceed by way of a curb cut and a roadway, that leads from Park Row to the front of City Hall Park?

OFFICER BROWN: That is correct.

THE COURT: All right. That is what I think Counsellor is alluding to.

MR. SCHIFFER: Yes.

Q With reference to the map, Defendant's Exhibit A, would that curb cut be approximately opposite or toward the letter "P", which appears in the midst of City Hall Park, on that map?

A No.

Q Approximately where would you place that curb cut?

A Approximately where I marked this truck.

THE COURT: Is that the "X"?

OFFICER BROWN: That is the "X".

THE COURT: (Marking Defendant's Exhibit A). All right, the "X" stands for the Defendant's truck. I have made it a little plainer and the "P", stands for the location of the Police car from which this witness said he alighted, is that correct?

OFFICER BROWN: That is correct.

Q Officer Brown--?

THE COURT: Now, is it determined - is it your testimony that the entrance of the roadway leading to the front of City Hall is at the point where you have placed the "X"?

OFFICER BROWN: Correct.

Q So that the roadway itself actually would include that letter "P" that I was referring to, if I have your marking correct?

A No.

Q It wouldn't?

A No.

MR. SCHIFFER: Then I am sorry, your Honor; I don't seem to understand what the witness has testified to.

THE COURT: This "P", as I see it now, the indentations--

MR. SCHIFFER: Your Honor, the indentations are on every Exhibit. And it seems to be a printer's symbol.

THE COURT: No, it is a printer's symbol for a curb cut-- Off the record.

(Discussion off the record)

BY MR. SCHIFFER: (CONT'G.)

Q Officer Brown, the roadway includes the letter, "P" and the word, "Park", within City Hall Park?

A Approximately, yes.

Q Officer Brown, isn't there a concrete, or a concrete and iron fence divider in Park Row, extending in a Southerly direction, from a point opposite where that "X" is?

A There is a fence there, yes.

Q Is there any break in the fence, fairly approximate - fairly close to where the "X" is, in a Southerly direction?

A I wouldn't say, fairly close.

Q Would you estimate the distance between the "X" and that break in the fence?

A A block, according to the map.

Q Now, at that break, is there a traffic sign, with a signal on the sign?

A I don't recall.

THE COURT: Which break do you refer to, Counseller?

MR. SCHIFFER: The break in the dividing fence, which divides Park Row. (Indicating)

THE COURT: Yes.

Q Is there a left turn permitted at that break?

A Yes.

Q There is?

A Yes.

Q Do you recall whether a car in that lane - in that left lane, at that point, must turn left?

A No.

MR. SCHIFFER: If your Honor please,

Mr. Kuh's motion and the discussion started basically with an objection to a question directed to Officer Brown, concerning the condition of the buildings and stores and the material in the truck. Now, Officer Brown, being familiar with that area and having been in that area on his assigned duties for a number of years, I would like to ask him a series of questions concerning that but, to save time, if your Honor will apparently adhere to the ruling previously made, I think, perhaps, we might not commence--

THE COURT: Supposing you make a formal offer of proof at this time and the Court will rule on it so that your record is protected?

MR. SCHIFFER: If permitted to testify, Officer Brown would testify--

THE COURT: You offer, at this time, to prove from your questions of this witness, as follows: Now, you state what you wish to prove.

MR. SCHIFFER: That the condition of Eldrige Street is, what is commonly referred to as a "Slum". That this Slum is a particularly unhealthy and unsound Slum; that there are accumulations of refuse in the yards behind and most adjacent to the buildings on Eldrige Street; that the material in the truck came from the buildings in Eldrige Street and from the back yards adjacent to behind 203 to 215 Eldrige Street.

THE COURT: Is that the end of your offer?

MR. SCHIFFER: That is it, yes. That is the end of the offer as to Officer Brown.

THE COURT: Your offer of proof is rejected.

MR. SCHIFFER: Exception, your Honor.

THE COURT: On the ground that it constitutes a collateral issue which is remote from the issue at hand and which, in no way, assists the Court in determining the innocence or guilt of these defendants charged with having committed a crime under Section 722, Subdivision 2, Subdivision 3, and Subdivision 4 and of having violated the Vehicle and Traffic Law, Section 1220, at a place far removed from Eldrige Street.

MR. SCHIFFER: May I have a moment to confer?

THE COURT: Yes.

MR. SCHIFFER: To confer with co-counsellor.

(Conferring with Mr. Kaplan)

MR. KAPLAN: May it please the Court, may I ask a few questions?

THE COURT: Surely. This is recross-examination?

MR. KAPLAN: This is recross-examination. May I just make reference to this, just a moment?

THE COURT: Certainly.

BY MR. KAPLAN:

Q Officer Brown, directing your attention to the time when you approached the truck that was parked on Park Row, how far behind the truck did you park, do you say roughly?

A About one hundred feet.

Q And when you parked, you got out of the car, I assume, right?

A Yes.

Q And did Mr. Mc Ardle - did he get out of the car too?

A I don't know.

Q He was the driver, wasn't he?

A Yes.

Q As you walked out of the car, did you see the truck in question?

A Yes.

Q And you saw the Policemen around it, is that right, in the area of the truck?

A I saw some Policemen.

Q And then you saw some people walking up and down, with signs, is that right?

MR. MC GINLEY: Your Honor, I object to these questions on the ground that they are repetitious.

THE COURT: I think so too. Sustained.

MR. KAPLAN: I haven't got to it at all - none of this.

THE COURT: Well, very frankly, I

don't know whether you have touched upon this but I do know that we have heard, in some cross-examination, where there were people there who shouted and were yelling and shouting slogans and carrying signs.

MR. KAPLAN: The question was whether Officer Brown, when he disembarked from his car, whether he saw the demonstrators.

THE COURT: Go ahead, I will permit it. Did you see the demonstrators as you got out of your car?

OFFICER BROWN: I was over in the street at that time--

THE COURT: We are talking of people carrying signs, as you got out of your car?

OFFICER:BROWN: I don't recall.

THE COURT: He doesn't recall.

Q All right, now, as you got out of the car, did you walk or run toward the truck - in the direction of the truck?

A I walked.

Q And you walked one hundred feet from your car to the truck?

A Yes.

Q About how long did it take you to walk that distance?

THE COURT: If you remember; we don't want you to guess.

OFFICER BROWN: I wouldn't know.

Q Well, did it take two minutes, three minutes?

MR. MC GINLEY: Objection, your Honor. He said he doesn't know.

THE COURT: Sustained.

Q You don't know how long it took, is that right?

THE COURT: Did it take less than a minute?

OFFICER BROWN: Less than a minute, I would say.

THE COURT: That is close enough.

Q Now, at that point, as you walked, did you have to walk in a sort of semi-circle in order to reach from your car to the truck?

THE COURT: Ask him if he had to -

did you walk in a straight line, or did you walk in a semi-circle?

Q Did you walk in a straight line, or did you walk in a semi-circle?

THE COURT: Did you walk on a direct line, or in some kind of semi-circle?

OFFICER BROWN: A direct line. I wouldn't say, a semi-circle.

Q But it curves off, is that right?

A Not exactly, no. However, I had to walk inbetween card and I couldn't say it was exactly straight. I might have been ten feet on one side, or ten feet on the other side.

Q You walked in the street, or at the curb, but not on the sidewalk, toward the truck, from your car?

A The car was in the street.

THE COURT: Yes or no; were you on the sidewalk?

OFFICER BROWN: No, Sir.

Q You walked in the street?

A Yes, yes.

Q Now, as you approached the truck, there were some people in the back of the truck, is that right?

A That is correct.

Q Do you know who they were, at that time?

A Their names?

Q Yes, Sir.

A No.

Q But there were people—

THE COURT: Do you know now who they were?

OFFICER BROWN: I do, Sir.

THE COURT: That is the important thing.

Q You then approached the truck from the side, is that right?

You walked up to the truck from one of its sides?

A I walked up to the truck from the rear. I then went from the rear of the truck to the front of the truck.

Q Facing toward the rear of the truck, looking in the truck, did you see the people in it that you now see in the courtroom, or someone else?

MR. MC GINLEY: I object to it as being repetitious.

THE COURT: Yes. You were going to recross-examine for just a few questions?

MR. KAPLAN: It is just a few, just covering something that was not brought out before.

THE COURT: Will you get to the point, which you wish to cover. I am not going to permit you to repeat all the testimony which was adduced last Thursday.

Q Then you saw people - you saw some people in the truck - you were looking toward the back, is that correct?

A As I approached the truck, yes.

Q But you didn't get on the truck at that point, did you?

A No.

Q You had gone to the front of the truck?

A Yes.

Q And you tried to move the truck?

A Yes, I tried to start it.

THE COURT: You tried to what?

OFFICER BROWN: To start the truck.

Q Did you get in the driver's seat?

A I did.

Q Who was with you?

A At that point, there were Police Officers standing outside.

Q In front of the truck?

THE COURT: When we ask, who was with you, was anybody with you?

OFFICER BROWN: There was nobody with me in the truck.

THE COURT: Wait now. Was anybody with you helping you to start the truck; that is the question, is that correct?

MR. KAPLAN: Yes, your Honor.

OFFICER BROWN: There were people - there was one other Officer I believe said something about it.

Q What did he say?

A I don't remember.

Q But nobody was sitting next to you in the cab of the truck?

A No.

Q You say there were Policemen in front of the truck?

A I didn't say that.

Q Did you see Policemen in front of the truck?

A Not at that point - I don't recall.

Q When you went in to start the truck, did someone tell you to start the truck?

A There was someone in there before me trying to start it and I said, "Let me try it.".

Q A Policeman?

A Yes, Sir.

Q Did you talk to the Policeman more than you have already stated?

A No.

Q When you went tostart the truck, what did you intend to do with it after you started it?

MR. MC GINLEY: Objection, calling for an operation of his mind.

THE COURT: Sustained.

MR. KAPLAN: It is hot an operation of his mind, it is a question as to whether he did or did not know what he was intending to do with it when the truck started.

THE COURT: You want to know what he was intending to do with it after it started?

MR. KAPLAN: Yes.

THE COURT: You may ask him.

Q Did you have any plans--

MR. KAPLAN: Strike that out. What were you going to do with the truck after you had it started?

MR. MC GINLEY: Objection.

THE COURT: Sustained.

Q Did you start the truck?

A No.

THE COURT: Did you have any plans with respect to its removal?

OFFICER BROWN: No.

Q You were just going to start it and that's all?

A That is correct.

Q There came a time that you left the cab of the

MR. KAPLAN: It is hot an operation of his mind, it is a question as to whether he did or did not know what he was intending to do with it when the truck started.

THE COURT: You want to know what he was intending to do with it after it started?

MR. KAPLAN: Yes.

THE COURT: You may ask him.

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MR. MC GINLEY: Objection.

THE COURT: Sustained.

Q Did you start the truck?

A No.

THE COURT: Did you have any plans with respect to its removal?

OFFICER BROWN: No.

Q You were just going to start it and that's all?

A That is correct.

Q There came a time that you left the cab of the truck?

A Yes.

Q And you walked around to the right side - the truck was facing South; that would be towards the right side?

A No.

Q Which side was it?

A I stood on the side of - on the side I was on.

Q Which side was that?

A That would be the left side.

Q So we get to the left and right, correct? Is that the left side you were on?

THE COURT: He said the left side of the truck.

OFFICER BROWN: The truck's left side.

Q And you were about a foot from the other side, looking up?

A No, I was about five feet from that side, but I was looking up.

Q And then you saw things and paper rolling off the side?

A No.

MR. MC GINLEY: Objection.

THE COURT: Sustained.

Q Did you see anything, as you say, standing on the side of the truck?

MR. MC GINLEY: My objection to that is on the basis of sheer repetition.

THE COURT: We have had that previously, Mr. Kaplan.

MR. KAPLAN: If your Honor wishes me to discontinue, I will.

THE COURT: No, go to the next point. You have had your opportunity to cross-examine.

MR. KAPLAN: All right.

THE COURT: And I do not want to limit you, if you have something new that has not been covered.

MR. KAPLAN: I have something new.

THE COURT: Then ask him.

MR. KAPLAN: Of course, it all presupposes the premise being correct and that is why I am asking these questions.

BY MR. KAPLAN: (CONT'G.)

Q Officer, when you first got to the truck, where were you standing, on which side of the truck?

A On the other side of the truck.

THE COURT: That was on the right side of the truck?

OFFICER BROWN: The right side of the truck.

Q You went from the left side to the right?

A I went from the right side to the left.

Q And then there came a time when you boarded the truck?

A That is correct.

Q When you boarded the truck, you say, at that point, you didn't see anybody throw anything over the side, or unloading anything over the side, as you boarded the truck?

THE COURT: Boarded the truck from the driver's side?

MR. KAPLAN: From the body of the truck.

THE COURT: Would you say that, please?

Q From the body of the truck?

THE COURT: Did you mount the body of the truck?

OFFICER BROWN: Yes, but not from the rear.

Q How did you mount it?

A From the front, over the cab.

Q You mean you got on top of the cab?

A Correct.

Q And then you went to the top of the cab, meaning the motor portion of it?

A Yes.

Q And then you went to the body, or the bed of the truck?

THE COURT: I think there is a misunderstanding here. The motor portion of the truck is in front of the cab and is separated from the body by the cab.

MR. KAPLAN: Yes, Sir.

~~THE COURT: Now, in order to get into~~

the body, or inside - in order to get into the body, behind the cab, would you have to go from the cab - from some portion of the cab into the body?

OFFICER BROWN: Yes, Sir.

THE COURT: He couldn't do it from the motor portion.

Q May I show you, please, People's Exhibit 1, in evidence. You didn't enter the back of the truck; you didn't go through the back?

A I did not.

Q You went on top of the cab and from the top of the cab you jumped down to the body of the truck?

A That is correct.

Q Now, when you were in the bed of the truck, you saw Gordon Schafer and the Officers, is that right?

MR. MC GINLEY: I object to the question. It was testified to on direct-examination and on cross-examination of both Counsellors. He testified whom he saw and what they did.

THE COURT: Correct. Whom did you see?

Q Whom did you see? Tell me whom you saw when you jumped into the bed of the truck?

THE COURT: Objection sustained. We have been over that. I have it written right in my minutes. We have been over that already.

MR. KAPLAN: May I ask who he saw?

THE COURT: He saw, according to my minutes - I have "F. K. G.".

MR. KAPLAN: "F. K. G."?

THE COURT: Yes, and I will tell you who they were: Freedman, Kalb and Gonzales.

MR. KAPLAN: Very well.

MR. SCHIFFER: I believe, your Honor, that subsequently, on cross-examination, he indicated he didn't actually see any of them throw it. He never saw them in the act of throwing.

THE COURT: No, that was only as to one. He said he saw the material coming over and he saw - he ordered them to stop throwing the material. Now, there was one, who was Boyer, I believe, who was up there bending down, with his hands in the material.

MR. KAPLAN: Just a few more questions and I am through.

THE COURT: All right.

BY MR. KAPLAN: (CONT'G.)

Q When you were in the bed of the truck, did you see Freedman?

MR. MC GINLEY: Objection, your Honor.

THE COURT: Sustained.

Q You saw Freedman, is that right?

MR. MC GINLEY: Objection, your Honor.

MR. KAPLAN: How can I make reference to someone if I don't mention the name?

THE COURT: Objection overruled. This may be introductory to some other state of facts.

Q You saw Freedman?

A I saw Freedman.

Q And, at that time, when you were in the bed of the truck, what was he doing?

THE COURT: I am just looking at my record of the testimony. He said he saw "F. K. G." throwing stuff—

MR. KAPLAN: Your Honor, my understanding isn't that. That isn't my understanding of the testimony. That was at least periphe~~r~~al to what I am asking. May I ask the questions?

THE COURT: Just one moment so that we get straightened out: He said while he was walking towards the truck, approaching it from the rear he saw "F. K. G." throwing stuff - actually saw them while he was approaching from the rear. That is what my minutes state.

Then he goes on to state he can't swear that Gordon, Gannon or Schaefer were in the back of the truck. He saw others there but at this time he cannot say if they were there at the time. He climbed into the truck and ordered them to stop throwing the material and they obeyed. That is what my notes show.

MR. KAPLAN: May I ask the question, your Honor?

THE COURT: Certainly.

Q When you were in the bed of the truck and you saw Freedman, what was he doing, if you remember, Officer?

THE COURT: Let us distinguish from what you saw at the time you were approaching the truck from the rear - that is one incident and, now, there is another incident that is being inquired into and that is when you climbed into the bed of the truck.

Now, with that in mind, narrowing it down to that incident, when you climbed into the truck, what did you see Freedman do at that time?

OFFICER BROWN: He was standing there.

THE COURT: Did you see him do anything?

OFFICER BROWN: I don't recall seeing him do anything, any act or anything, at that time.

BY MR. KAPLAN: (CONT'G.)

Q When you climbed into the back of the truck, at the same time, what was Kalb doing?

A He was standing there.

Q And, at the same time, what was Gonzales doing?

A He was standing near there.

THE COURT: Were they doing anything at that time, at all, besides standing there?

OFFICER BROWN: When I first--

THE COURT: When you climbed into the truck?

OFFICER BROWN: I told them to stop--

THE COURT: Were they doing anything at the time you climbed toward the back of the truck? That is a simple question. See if you can answer it.

OFFICER BROWN: I wouldn't say they were doing anything - I don't know if they had - Boyer had his hand down in the material.

THE COURT: We have had that before.

Q Now, with reference--

THE COURT: With relation to Freedman, Kalb and Gonzales--?

OFFICER BROWN: Freedman was at the rear of the truck.

THE COURT: What were they doing?

OFFICER BROWN: I couldn't say completely what he was doing. I saw him there. I don't know which one - I don't know exactly what he was doing.

THE COURT: Do you know what Gonzales was doing?

OFFICER BROWN: He was standing to the left side of the truck.

THE COURT: What was Kalb doing, if anything.

OFFICER BROWN: Kalb was standing more or less in about the South portion of the truck.

THE COURT: Am I correct in saying they were doing nothing but just standing in the truck?

OFFICER BROWN: They were listening to me.

THE COURT: We are talking about physical activities, not mental activities. Were they doing anything physical, besides standing?

OFFICER BROWN: We were not seeing them doing anything physical.

THE COURT: At that time?

OFFICER BROWN: No.

THE COURT: All right, proceed.

BY MR. KAPLAN: (CONT'G.)

Q You said you saw these three throw material as you approached the rear of the truck, is that correct?

A That is correct.

Q Are you speaking of the time that you approached the truck after leaving your car?

MR. MC GINLEY: Objection, your Honor.

A That is correct.

THE COURT: It has been answered now. Go ahead from there.

Q When you left your car--?

THE COURT: That is what he said before.

Q --Did you arrest them?

A At that point--?

MR. MC GINLEY: Objection.

THE COURT: Sustained. Again, I want to make it clear, Mr. Kaplan, I am not going to permit a complete cross-examination of this witness at this time. He has already been cross-examined by both defense Counsel. I will not allow you to review all the testimony that has been placed in the record.

MR. KAPLAN: May I just be granted a few questions. I won't be long.

THE COURT: I don't care how much time you take as long as you do not repeat what you already did.

BY MR. KAPLAN: (CONT'G.)

Q Officer, I show you the Defendant's Exhibit B, for identification, and ask you if this is a fair representation of the curb-cut in Park Row, leading from City Hall Park?

A Yes.

Q Now, does it fairly represent its physical appearance; is it accurate as of the time in question. Is that the way it looked then?

A On the day in question, yes, other than the people.

THE COURT: We are not talking about the people, or the truck, or the traffic. We are just talking about the street as it looked at the time, devoid of any traffic or human beings?

OFFICER BROWN: Yes.

THE COURT: That is a picture of that area, is that right?

OFFICER BROWN: Yes.

MR. KAPLAN: May it be marked in evidence, your Honor.

THE COURT: Show it to the District Attorney.

MR. MC GINLEY: (Examining proposed Exhibit) No objection, your Honor.

THE COURT: Admit it into evidence as Defendant's Exhibit B.

(Photograph received in evidence and marked by Court Officer as "Defendant's Exhibit B" (DEB)

BY MR. KAPLAN: (CONT'G.)

Q Officer, what do the white lines mean, do you know, on the ground, that you see, these diagonal white lines?

A I know they have them there for a reason but what they mean, I don't know.

Q What do you think they mean?

MR. MC GINLEY: Objection.

THE COURT: Sustained. You are a Police Officer, aren't you?

OFFICER BROWN: Yes.

THE COURT: Are you familiar with - you sometimes engage in traffic enforcement?

OFFICER BROWN: Yes.

THE COURT: You have given summonses for traffic violations, haven't you?

OFFICER BROWN: Yes.

THE COURT: You have seen areas of the City, haven't you?

OFFICER BROWN: Yes.

THE COURT: Crosswalks that are similarly marked - crosswalks are similarly marked to the way they are marked here?

OFFICER BROWN: Yes.

THE COURT: Is that correct?

OFFICER BROWN: That's right.

THE COURT: Don't you know what they mean?

OFFICER BROWN: Well, your Honor, I know that means a crosswalk. I don't know exactly what Law - I don't know exactly what he wants.

THE COURT: Is it your impression that these marks are for crosswalks?

OFFICER BROWN: Yes.

THE COURT: That is all you know about it?

OFFICER BROWN: That's all.

THE COURT: I think you have your answer.

BY MR. KAPLAN: (CONT'G.)

Q All right, now, when you got into the body of the truck and tried to start it, was the truck parked on these white lines or to the left of the white lines, looking South, looking Downtown, or to the right of the white lines, at that time?

A I would say it was straddling - part of the truck was on the left and part of the truck was on top of the white lines.

THE COURT: Where was the front of the truck?

OFFICER BROWN: The front of the truck was facing - this is South; it was facing South.

THE COURT: The South roadway, that is Park Row?

OFFICER BROWN: That is Park Row.

THE COURT: This area here, is that Park Row?

OFFICER BROWN: That is Park Row.

THE COURT: Was it facing on Park Row, towards the building shown on the picture?

OFFICER BROWN: It was facing in that direction but it wasn't out in the middle of Park Row.

THE COURT: I am just trying to find out where the truck was facing?

OFFICER BROWN: It was facing South.

THE COURT: You are certain it was not

facing the entrance of City Hall Park?

OFFICER BROWN: No, it wasn't.

BY MR. KAPLAN: (CONT'G.)

Q Now, what portion of the bed of the truck, Officer, do you think straddled the white line, if this is Park Row?

MR. MC GINLEY: Objection to what the Officer thinks.

THE COURT: Sustained. Reframe your question.

MR. KAPLAN: Excuse me a minute.

THE COURT: What portion of the truck was over the white line shown in the picture and what portion of the truck was on the portion of the roadway that was not marked with the white line?

OFFICER BROWN: The left side of the truck was on Park Row and this side of the truck was on the crosswalk.

THE COURT: What portion of the truck, percentagewise - what portion of the body was on the white line?

OFFICER BROWN: 70-30 - 70 percent. in Park Row and 30 percent. on the white lines.

Q Officer, looking at the signs, do you know what those signs read; can you read them?

A "No thoroughfare, official cars only.".

MR. KAPLAN: No further questions, your Honor.

MR. SCHIFFER: May I ask one further question?

THE COURT: Yes.

BY MR. SCHIFFER:

Q Do signs of that kind close off the area for all traffic?

A I have seen signs like that there before, yes.

Q I mean, if somebody tried to go through, you would stop them?

A I have never.

MR. SCHIFFER: Thank you.

THE COURT: No further questions?

MR. MC GINLEY: I have one further question. May I have this picture marked, "People's

Exhibit 2, for identification"?

(Court Officer marking proposed Exhibit, for identification)

BY MR. MC GINLEY:

Q Officer, I show you People's Exhibit 2, for identification and ask you if this is a fair and accurate representation of the scene in front of City Hall on August 21st, 1963?

THE COURT: At what time, after the arrest had been made - the arrest of these defendants?

MR. MC GINLEY: Yes, your Honor.

A Yes, that is the - that is a fair representation.

THE COURT: You are referring to immediately after the arrest?

OFFICER BROWN: Yes, your Honor.

Q What did you say, Officer?

A Not this - this would be taken, this truck here was taken away. The truck was parked.

Q That is what I am asking you, at the time--?

A The truck is not there in the picture.

Q From where the truck was, in relation to the picture that is before you, is that a fair and accurate representation of the surroundings--?

A Yes.

Q --Although the truck is not in the picture?

A Yes, yes. The truck had been removed.

THE COURT: That is a fair representation of where the truck was and the truck had been removed, is that correct?

OFFICER BROWN: That is correct.

THE COURT: Was the truck removed before or after the arrests were made?

OFFICER BROWN: After.

THE COURT: How much time elapsed between the arrest and the removal of the truck?

OFFICER BROWN: I don't know.

THE COURT: About how much? An hour, a half an hour, ten minutes, five minutes?

OFFICER BROWN: Ten minutes, fifteen minutes.

THE COURT: Now when the truck was removed - after the truck was removed, I show you People's Exhibit 2, and ask you whether this fairly represents the area immediately after the truck was removed?

OFFICER BROWN: Your Honor, I wasn't there at that time.

THE COURT: Then you don't know?

OFFICER BROWN: No.

THE COURT: All right.

MR. MC GINLEY: I withdraw the question. I have no further questions.

THE COURT: You are excused; thank you, Sir.

MR. SCHIFFER: Your Honor, may we approach the bench?

THE COURT: Certainly.

(Discussion at the bench)

OFFICER GEORGE DILLINGHAM, having been first duly sworn, by the Court, testified as follows:

THE COURT: Give your name, Shield Number and assignment.

OFFICER DILLINGHAM: Patrolman George Dillingham, Shield Number 3569, assigned to the Fifth Precinct.

BY MR. MC GINLEY:

Q Officer, were you on duty on the 21st of August, 1963?

A I was.

Q What hours did you work on that day?

A 8 A. M. to 4:00 P. M.

Q Sometime after two o'clock in the afternoon, were you on duty at the Plaza on Park Row?

A Yes.

Q Is that in the City and County of New York?

A Yes.

Q Will you please tell the Court what you saw at that time?

THE COURT: At what time? He said sometime after two. How much after two? What time was it?

OFFICER DILLINGHAM: Approximately two thirty.

I was on foot patrol in the City Hall Plaza approximately one hundred feet West of Park Row when I observed this red truck going South on Park Row.

It stopped at approximately the crosswalk of Park Row and City Hall Plaza, stopped for possibly a minute and continued another two or three truck lengths and then stopped again.

A few seconds after the second stop, this rubbish and debris came over the side of the truck, landing into the sidewalk and part of the roadway. I walked down to the truck. When I approached the rear of the truck, a group of men were standing by the left rear of the truck, on Park Row, with their arms around each other's necks, chanting and shouting.

Captain Licht, my Commanding Officer, called me to him and said, "I am going to inform these people--"--

MR. SCHIFFER: I object, your Honor.

THE COURT: Sustained.

Q ~~Officer, who was in that group as you saw them?~~

with arms clasped around one another, singing and chanting? Do you see any of those people in that grpup here today in the courtroom?

THE COURT: Do you see any of them?

OFFICER DILLINGHAM: Yes, I see the four down in the front row.

THE COURT: Were they on the truck or in the street?

OFFICER DILLINGHAM: They were in the street.

THE COURT: As I understand it, he saw this truck coming up and it stopped about the entrance of City Hall Plaza?

OFFICER DILLINGHAM: Yes, Sir.

THE COURT: And you said that two or three seconds after it stopped, the debris started to come off the side of the truck?

OFFICER DILLINGHAM: Yes.

THE COURT: And you went to it?

OFFICER DILLINGHAM: I started towards it.

THE COURT: How much time elapsed between the time you saw the debris come off and the time you arrived at the truck?

OFFICER DILLINGHAM: I walked approximately one hundred feet.

THE COURT: How long did it take you?

OFFICER DILLINGHAM: Approximately a minute.

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CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT OF MINUTES OF SEPTEMBER 3RD, 1963, IN THESE CASES.

Frederick Weinberg

FREDERICK WEINBERG
OFFICIAL COURT STENOG.

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196-20M-709688(62)

COURT REPORTER'S MINUTES

Criminal Court of the City of New York

Part 1C, County of New York

THE PEOPLE OF THE STATE OF NEW YORK
on the complaint of

vs

JON SCHAEFER, et al.,
Defendants.

BEFORE
Hon. GEORGE S. RAMER,
Judge.

September 3, 1963
Afternoon Session

CHARGE

CONTINUED TRIAL

TRIAL (or) HEARING

APPEARANCES:

For the People see face sheet

For the Defense

WITNESS	DIRECT	CROSS	RE-DIRECT	RE-CROSS
Patrolman George Dillingham				
Patrolman Bernard Houston				

ARNOLD S. ROTHBARD, CSR.,
Official Court Reporter

CRIMINAL COURT OF THE CITY OF NEW YORK
PART 1C : NEW YORK COUNTY

THE PEOPLE OF THE STATE OF NEW YORK

-against-

JON SCHAEFER, ANTONIO VASQUEZ, STEPHEN GORDON, ALEXANDER BOYER, ELEUTERIO GONZALEZ, JEFFERY KALB, JOEL FREEMAN and GEORGE CANNON,

Defendants.

CONTINUED

CONSOLIDATED

TRIALS

On: September 3, 1963
AFTERNOON SESSION

At: 100 Centre Street,
New York13, N. Y.

Before:

HONORABLE GEORGE S. RADER,

Presiding Judge.

--ooOoo--

ARNOLD S. ROTHBARD, CSR.,
Official Court Reporter.

PATROLMAN GEORGE DILLINGHAM, Shield No. 3569, assigned to the 5th Police Precinct, resuming the stand, testified further, as follows:

THE COURT: I think the last inquiry that was made of this officer was how many people were gathered and the last thing he said was in response to your question, that there was one police car present, is that correct?

THE WITNESS: That's right.

THE COURT: That you recognized?

THE WITNESS: I saw one car.

CROSS EXAMINATION BY MR. SCHIFFER (Continuing):

Q Officer Dillingham, this map, Defendants' Exhibit A, you will see the letters N, S, W and E on it to indicate the compass directions. It might help if you put the letter N at the top, north, then you'll be having that map going north and south. Now at the corner of Centre Street and Chambers Street, in the area marked on the map as City Hall Park, is there a subway exit--

MR. McGINLEY: I'm going to make an objection on the ground of irrelevancy.

MR. SCHIFFER: Subject to connection, your

Honor.

THE COURT: Overruled. I'll take it subject to connection.

Q Is there a subway entrance and exit?

THE COURT: Within the park itself?

A Yes.

Q At this corner?

A It's not in the park; on the sidewalk outside the park.

Q On the sidewalk outside the park at the intersection of Chambers and Centre Street?

A Close by.

THE COURT: It would be at the northwest corner.

THE WITNESS: In here on the sidewalk, outside the park railing.

THE COURT: Do you want him to draw a little square where that would be?

MR. SCHIFFER: All right, your Honor, that would be helpful. We might just mark it with the letter S for subway.

THE COURT: Put an S beside it. All right.

Q Now, Officer, do you know what station of the subway that might be?

A Brooklyn Bridge Station.

Q To your knowledge, Officer, is that a busy station?

A Yes.

Q It is, so that there would be normally a reasonable number of people coming out of that exit and using that sidewalk?

A Yes.

MR. McGINLEY: Objection, your Honor.

THE COURT: Overruled.

Q And during the afternoon that would be more or less a constant condition; in other words, if I may clarify that, there would be virtually no time between two and three when you would not expect some number of people to be utilizing the subway exit?

MR. McGINLEY: Objection, your Honor.

THE COURT: Sustained. It isn't important what he expects. It's what he knows or what he saw at the time.

Q Now in the area near the place where the truck stopped, that being identified--

THE COURT: By the letter X.

Q --by the letter X on that map, in that area and to the north and south--withdrawn. You have marked, you've seen the letter X?

A I have the X, yes.

Q To the north of that were there any people carrying signs and marching?

A Yes.

Q There were. How many such people were there?

A Approximately fifty.

Q Approximately fifty. To the south of that X, were there people carrying signs and marching?

A Not that I recall, no.

Q You do not recall. Now when did the people marching to the north of the letter X arrive?

THE COURT: If you know?

A To my knowledge, when I first saw them was approximately one o'clock.

Q You saw them there at one o'clock. Were you there continuously from one o'clock until sometime after the arrests?

THE COURT: When you say "there", where do you mean?

Q Excuse me. Were you in this immediate area near the X?

A I was in City Hall Park. I cover from Broadway over. I could be anywhere between Broadway and Park Row.

Q You were then in this immediate vicinity?

A In City Hall Plaza.

Q From before one o'clock?

A Yes.

Q You saw the people arrive with the signs?

A I first noticed them at one o'clock. They were already grouped there.

Q Did you see what the signs said?

A I didn't notice.

Q You did not notice. Did any of them say, "Freedom Now."?

A I didn't notice what they said.

Q You did not notice what any of them said. Did the people carrying the signs say anything? Did they say any slogans?

THE COURT: Did you hear what they said?

THE WITNESS: No, your Honor, I didn't.

Q You did not hear what they said. Did these people sing any songs?

A I don't recall.

Q You don't recall, but you recall that they marched up and down?

A Yes.

Q Were they always marching as long as you observed them in the area north of the X?

A Yes.

Q Approximately how far to the north of the X did they march before turning about?

A Approximately forty feet.

Q Approximately forty feet. Would you mark on the map, if you please, the northern terminus of their marching as the furthest northern extent that they marched?

THE COURT: First show us, before you mark it, where were they marching?

THE WITNESS: They were on the sidewalk. They were south of where the truck was.

THE COURT: Not north, is that right?

THE WITNESS: South, on the sidewalk alongside the City Hall railing, which would be down here.

THE COURT: Now this line across is supposed to represent, not officially, but indefinitely, the roadway which leads from Park Row over to Broadway, which passes in front of City Hall. Now, using that--

THE WITNESS: Near the Spruce Street intersection.

THE COURT: From the truck south?

THE WITNESS: Yes, sir, in here, opposite Spruce Street, opposite Pace College.

Q In other words, they were not marching to the north of the truck, they were marching to the south of the truck?

A To the south of the truck, that's right.

Q Fine, Officer. Would you mark then the southern most point, to the best of your recollection.

A This area here.

THE COURT: Put an M there for marchers.

Q Now we understand that although that marking is in the midst of Park Row, they were in fact marching on the sidewalk?

A On the sidewalk.

Q Right. At the time between one o'clock and the time the truck arrived that these people were marching, did you observe pasers-by on that sidewalk?

A Yes, there were people walked by there.

Q Did you observe passers-by to the north during that same time, between one o'clock and the time the truck arrived?

A Yes.

Q Did any of those passers-by stop?

A Not that I noticed.

Q You did not observe them stopping?

A No, I didn't.

Q At no time did you see any passers-by stop?

A I didn't take notice.

Q You took no notice. What were traffic conditions immediately on Park Row and Centre Street, immediately prior to the arrival of the truck?

A I'd say moderate, a moderate flow of traffic.

Q Moderate. Could you describe that possibly a little more precisely for us in terms of the number of vehicles passing by?

A That I can't say. They come, they stop for a light here and there, you get a group of maybe ten, fifteen cars go by and then the light may change at the further end and you get another group. You get the exit from the Brooklyn

Bridge, spasmodically they come down, three, four, five cars.

Q Fairly steady traffic?

A It keeps moving.

THE COURT: Are you talking now generally or do you speak of that time?

THE WITNESS: At that particular time.

Q At that particular time?

A Around that time it's moderate.

Q Now at about the place where Spruce Street is on that map, there is a place where a left turn can be made, is there not?

A Yes, there is a turn there, yes.

THE COURT: At Spruce Street he said.

THE WITNESS: Yes, at Spruce off Park Row.

Q There is a break in the iron fence at that point, is that correct?

A Yes.

Q Did you notice the sign which is on the post at that point?

A There's a sign on the past saying, "Left lane must make left turn."

Q I see. Would that, did that, during the time between one o'clock and the time that the truck arrived, ever cause a number of cars to stand momentarily waiting to make that left turn?

MR. McGINLEY: Objection, your Honor.

THE COURT: Sustained.

Q During the time between one o'clock and the time the truck arrived, did you see any cars stopped at that sign momentarily or otherwise?

A I didn't take notice.

Q You took no notice. Now before the recess, Officer Dillingham, you mentioned some fifteen or so people.

THE COURT: Fifteen or twenty people, he said, exclusive of the police.

MR. SCHIFFER: Exclusive of the police, who stopped to watch what was happening.

THE COURT: So that we might not be mistaken, he said the fifteen or twenty people were to the rear. That doesn't exclude other people he might have seen, concerning which you did not question him

MR. SCHIFFER: I understand, your Honor.

Q Those people, Officer Dillingham, were placed by you on the northern sidewalk which is on this northern side of the X. What did you observe those people doing?

A Just standing and watching.

Q Just standing and watching. Did you observe any people on the southern sidewalk, that is, below the X?

A All I noticed, the demonstrators were still there. I didn't notice any other people there.

Q You saw no other people there?

A I didn't notice any.

Q You saw that you saw one police car. Where did that police car stop?

A When I saw it, it was at the rear of the truck.

Q Was it immediately to the rear of the truck?

A Approximately ten, fifteen feet behind it.

Q Ten or fifteen feet behind it, projecting into the street?

A Directly behind the truck.

Q How long was that police car in that position?

A For as long as I was there.

Q In other words, from the arrival of the truck or shortly thereafter?

A I didn't notice the police car when the truck arrived. I noticed the car when I got there behind the truck myself.

Q And it was still there when you departed, is that correct?

A Yes.

Q Is the area we have just described, the vicinity of City Hall Park, is that where you normally are assigned?

A Yes.

Q You are there every day. Did you receive any special instructions on this day, August 21st?

A No.

Q Were you instructed to expect any unusual events?

A We get that every day. We have, practially every day there's a demonstration there.

Q What instructions do you have with respect to demonstrations?

A Be on the alert--

MR. McGINLEY: Objection, your Honor.

THE COURT: Sustained.

Q Officer Dillingham, on Exhibit 3 you have marked certain persons as being among the defendants. One of those persons is marked with the letter G to stand for Gordon?

A It is.

Q Will you please examine the picture of that person's head.

A His what?

Q The picture of his head.

A Yes.

Q We cannot see his face, is that correct?

A You can see the side of his face.

THE COURT: You can see his face on this picture.

Q You can see a portion of his face, you cannot see his full face?

THE COURT: IS that right?

A Yes, the side of his face.

Q Now please examine the hair of that person. Would you say that that was straight hair or curley hair?

MR. McGINLEY: Objection, your Honor.

THE COURT: Overruled; if you know. Can you distinguish?

THE WITNESS: No, sir. I know it's dark hair.

Q Would you state that that person had a part in his hair?

A That I can't see.

Q Would you examine it closely, please.

A It seems like a reflection there.

THE COURT: Would you say it's a part?

THE WITNESS: No, sir.

THE COURT: He says no, it's not a part.

Q On the afternoon in question, when did you first see the defendant Gordon?

A When he was in the group.

Q Did you see the defendant Gordon standing at the side of the truck?

A No, I didn't.

Q Did you have a conversation with any other police officer concerning the defendant Gordon?

A No, I didn't.

Q No police officer came to you with Gordon and asked you to take him?

A No.

Q Did any police officer other than Captain Licht address any remarks at all to the defendants in your hearing?

A I didn't hear it.

MR. SCHIFFER: Just mark that for identification.

THE COURT: Don't ask him to mark it until you offer it for identification, so if there is a possible objection--

MR. SCHIFFER: I showed this to the Assistant before.

THE COURT: Any objection?

MR. McGINLEY: No objection.

THE COURT: Mark it Defendants' Exhibit C for identification.

(One photograph is marked Defendants' Exhibit C for identification.)

Q Now, Officer Dillingham, you have testified, as I understand it, that virtually from the time that the defendants linked arms they were constantly in your observation, is that correct?

A Yes--no, no. To the time they linked arms? They already had their arms linked when I came to the rear of the truck. There was a group there with their arms linked.

Q They already had their arms linked. I ask whether you were present when that photograph was taken?

A Yes.

MR. SCHIFFER: I now offer it in evidence.

MR. McGINLEY: I've seen the picture and I object. I don't think there's any proper foundation laid for that picture. We don't know when it was taken or whether the officer thinks it's a fair reproduction of what happened at the time.

THE COURT: Is this a fair reproduction of a scene which you witnessed at or about the time?

THE WITNESS: I didn't witness this.

THE COURT: You didn't see it.

MR. SCHIFFER: Excuse me, but he's already said he was right there.

THE WITNESS: Yes, I was to the side.

THE COURT: You were there on the side?

THE WITNESS: I am in the picture.

THE COURT: Did this occur at or about the time of arrest?

THE WITNESS: I didn't see that. I didn't see anyone talking to any of these defendants.

THE COURT: That's not the question. The question is, it's obvious you were there at the time. You are in the picture.

THE WITNESS: Yes, I am here (indicating).

THE COURT: Now did this picture take place, the scene depicted in this picture, did that take place at or about the time of this incident?

THE WITNESS: Yes, sir.

THE COURT: And does it fairly represent an incident that took place within your view at the time you were there?

THE WITNESS: Yes.

MR. McGINLEY: Objection, your Honor.

THE COURT: Admitted as Defendants' Exhibit C in evidence.

(One photograph, previously marked Defendants' Exhibit C for identification, is received and marked Defendants' Exhibit C in evidence.)

Q Would you please be kind enough to mark your image there with your initial. You are shown there standing behind someone. Who is it that you are standing behind?

A The first man on the right there (indicating).

THE COURT: What is your name?

DEFENDANT SCHAEFER: Schaefer.

A Schaefer.

THE COURT: Mark it with an S. Would it help to mark all of the defendants, if he can, those which he recognizes?

Q Who is the next person? Can you recognize that person?

A It could be--

THE COURT: It could be or do you know?

THE WITNESS: I'm not sure.

MR. SCHIFFER: You cannot be sure.

THE COURT: Now how about the next person, the fellow with the plaid shirt on?

THE WITNESS: No, sir.

THE COURT: You're sure or you can't be sure?

THE WITNESS: I can't be sure of him. I didn't arrest that man.

Q Now who is the police officer between the two persons you cannot identify?

A I don't know his name either.

Q Now you were standing, based on that picture--well, how far were you away from that police officer?

A From the picture, possibly four, five feet.

Q You did not observe this police officer in conversation with the unidentified person?

A No, I did not.

Q You did not hear him say anything?

A I didn't see him or hear him.

Q Did this occur before or after the arrests?

A I don't know that either.

Q You have testified that when you arrested the defendants, you separated them?

A I did, yes.

Q Does that picture show two persons, one of them being the defendant Schaefer, with arms linked?

A Yes.

Q Then based on your prior testimony, would you say that this picture was taken before the arrests or after?

A Before.

Q Before the arrests.

BY THE COURT:

Q I show you People's Exhibit 3 and ask you to identify the officer to your right.

A Captain Licht.

Q Would you say that this officer is the same man (indicating on photograph)?

A No, sir.

Q Now I noticed that this officer seems to have a gold band at the top of his hat over the vizor of his cap. He is the only man with a gold band, is that correct, the only officer with a gold band?

A Here too.

Q This man has a gold band and this man has a gold band?

A Yes, sir.

THE COURT: All right.

CROSS EXAMINATION BY MR. SCHIFFER (Continuing):

Q Officer Dillingham, did you see any policeman on the truck at any time?

A Yes.

Q At the time the policemen were on the truck, were the persons you arrested on the truck or on the ground?

A There was one man on the truck, one of those that I arrested.

Q Was on the truck.

A He was getting off the truck as I come around the back of the truck.

Q Did you see any of the others getting off the truck?

A Yes.

Q Were there police officers on the truck as they were getting off?

A Yes.

Q Were the police officers directing them to get off?

A I don't recall.

Q By word or gesture?

A I don't recall. The police officers were getting off themselves, as they were holding on to get off.

THE COURT: You say you saw one man get off?

THE WITNESS: One man that I arrested got off, your Honor.

THE COURT: Who was he?

THE WITNESS: Boyer.

Q There was a police officer behind him as he was getting off?

A Yes.

Q Did you see that police officer directing Boyer to get off?

A No, I didn't see. The police officer was helping himself off. He was holding on.

Q How were they getting off? Excuse me, there is an exhibit, People's Exhibit 1, that shows the rear of the truck. Now could you tell us, looking at People's Exhibit 1, how they were getting off?

A Off here, through the back, holding on and coming off the tail here.

Q Did you go over to the defendant Boyer as he was getting off the truck?

A No.

Q Did you observe what the defendant Boyer did immediately after getting off the truck?

A No.

Q Did you observe what the police officer behind Boyer did immediately after getting off the truck?

A No.

Q Now we've counted nine police officers in the photograph, People's Exhibit 3. How many other police officers were present in the immediate vicinity?

A I don't know.

Q There were other police officers?

THE COURT: Were there others? Were there more than nine, do you know?

THE WITNESS: I don't know, your Honor.

Q After the defendant Boyer reached the ground, was the police officer who had been behind him on the truck in close proximity to him?

A No.

Q No. Were there other police officers in close proximity to the defendant Boyer?

A Yes.

Q How many other police officers would you say were close to Boyer?

THE COURT: Do you know?

THE WITNESS: One. The Captain is all I noticed.

Q Any others?

A I didn't notice any of them.

Q Were there police officers between the defendants and the material which they had unloaded, or some of them had unloaded from the truck?

MR. McGINLEY: Objection, your Honor.

THE COURT: Sustained. Reframe the question.

Q You are aware that certain material was unloaded from the truck?

A Yes.

MR. McGINLEY: Object to the form of that question too, your Honor.

THE COURT: Overruled.

Q Now that material, to the best of your recollection, was where in relation to the truck, that is, to the right of the truck, behind?

A To the right side.

Q To the right side of the truck. Now as these persons, these defendants that you saw leaving the truck, came out of the back of the truck, were there one or more police between them and the material?

A I didn't notice.

Q I ask you to examine People's Exhibit 3. How many policemen are there between the people that you have marked as being defendants and the right side of the truck where the material was?

THE COURT: Mr. Schiffer, I must recall to you that your question is framed to relate to a time when they just got off the truck. Now this may be another time, so clarify that situation.

Q Officer Billingham, I notice one officer getting off the truck in this picture, Exhibit 3. How long after the people you have marked as defendants got off the truck was that picture taken?

THE COURT: If you know.

THE WITNESS: Approximately a minute, two minutes.

Q Could it have been less?

A Yes, it could have been less.

Q Now during that two-minute maximum period, to the best of your recollection, were these officer shown on the right part of the photograph in approximately the positions that they occupy in the photograph?

A I couldn't say.

Q You couldn't say. During that time were there policemen on the right side of the truck?

A I don't recall.

Q Officer Dillingham, did you see the truck coming to a halt?

A Yes.

Q You did. Now where were you when you saw the truck coming to a halt?

A I was in City Hall Plaza about a hundred foot west of that area.

Q Would you just be kind enough to mark it with a pencil.

A I can't. It runs here.

Q This is City Hall Park.

THE COURT: Where were you?

THE WITNESS: Right in front of the building. Right about here (indicating).

THE COURT: Mark it with an X with this pencil, where you were at the time the truck first arrived.

THE WITNESS: I'd say about over here.

Q Approximately in front of City Hall?

A Almost in front of the building.

Q At the letter Y.

THE COURT: He's made an X here, but we do have one X, so supposing we marked that area with an O. Will that be satisfactory, gentlemen?

MR. SCHIFFER: Yes, your Honor.

MR. McGINLEY: Yes, your Honor.

THE COURT: Mark it, Officer, Dil, D-I-L.

Q Officer Dillingham, are there some steps in front of City Hall?

A Yes.

Q How high above the road level would you say those steps are?

THE COURT: Well they begin at one level and go all the way up. Do you mean where they start or where they terminate? There's a high portion and a low portion.

MR. SCHIFFER: May I rephrase that, your Honor?

THE COURT: Yes, certainly.

Q Officer Dillingham, in front of City Hall, there is a low flight of steps that extends to the roadway itself, is that correct?

A Yes.

Q Were you standing on those steps?

A No, I was out in the roadway.

Q You were in the roadway itself and you were facing east, that is, facing to the point where the truck ultimately stopped. Just before the truck stopped, facing in that direction, what did you see?

A I saw the truck going south.

Q No, I say just before the truck stopped.

THE COURT: He said he saw the truck going south.

THE WITNESS: I saw the truck going south before it stopped.

Q Did you see any people standing there?

THE COURT: When you say "there", where do you mean?

Q Excuse me; standing between you and Park Row?

A No, I didn't notice any.

Q There were no people standing there?

A Oh, yes, there was policemen there.

Q How many policemen were standing there?

A I don't recall.

Q Would you estimate? Would you say five or ten?

A I would say two, at that particular area, yes.

Q Officer Dillingham, you were standing there looking directly at what I'm asking you to describe. Now I would like you to test your recollection a bit and try to remember how many policemen you saw.

A I don't recall seeing any at all. I wasn't looking at them.

Q Did you see any demonstrators from that point?

A Yes.

Q You saw demonstrators, so there must have been some policemen there?

MR. McGINLEY: Objection, your Honor.

THE COURT: Sustained; argumentative. He did say, however, that he looked and the best of his recollection he saw two. Is that what you said?

THE WITNESS: Yes, I could see two.

Q Which two policemen did you see? Did you recognize them?

A I recognized one as a patrolman that works around the same area as myself.

Q Do you happen to know his name?

A Patrolman Howe.

Q How would you spell that?

A That's H-O-W-E.

Q Is he with the 5th Precinct?

A He is, yes.

Q How about the other policeman that you remember seeing?

A I didn't recognize him.

Q You did not recognize him. Would you have recognized him if he were from the 5th Precinct?

A Yes.

THE COURT: You know everybody in the 5th Precinct? All of the Officers?

THE WITNESS: Yes, sir, by face; not by names.

Q And you didn't recognize this man's face?

A I didn't recognize it.

Q So we can conclude he was not from the 5th Precinct. Did you see any newspaper men at that moment?

A I don't recall any.

Q Did you see photographers at that moment?

A I didn't notice any.

Q Did you see any camera trucks or cameras, by which I mean television cameras with NBC, CBS or ABC?

THE COURT: Or any markings on them?

A They had television cars in City Hall Plaza.

Q They had them in City Hall Plaza?

A Yes.

Q How close were they to the barricade?

THE COURT: AT which barricade? There may have been more than one.

Q Excuse me, your Honor. How close were they to the barricade--

A I don't recall.

Q --next to which the truck parked?

A I don't recall.

Q Do you recall how amny men were with those trucks, men or women, people with those trucks?

A I don't know.

Q Do you recall how many of those trucks there were?

A I don't recall.

Q Officer Dillingham, did you see anyone at all try to open the side door in the rear of the truck, I mean not the side door to the cab.

THE COURT: In the middle of the body?

THE WITNESS: No, I did not.

Q Did you notice a sign on the side of the truck?

A The name of the trucking--

Q Well any sign?

A Yes.

Q What sign did you notice?

A Perry Rental or Perry Truck Rental.

Q How large was that approximately; two feet across, one foot across?

A From front to back of the truck.

Q From front to back on the side of the truck?

A Yes.

Q High or low?

A Approximately in the middle I would say. It runs at an angle.

Q Were there any posters on the truck?

A There was a white cloth with red lettering on the side of the truck.

Q What did that say?

A I couldn't read it. It was ruffled up.

Q Were there any pictures on that truck?

A I couldn't see any.

Q Now going back, if you please, to the time that you were standing at the point marked with the letter O in City Hall Plaza, facing in an easterly direction, you say that you saw the truck arrive, is that correct?

A Yes.

Q At the time that the truck arrived, were there policemen who came up to it?

A I didn't see any. I didn't recall seeing any.

Q You saw no policeman come up to the truck?

THE COURT: He said he didn't recall seeing any. That doesn't eliminate the possibility that some did.

MR. SCHIFFER: I would agree with your Honor, since nine of them seem to have reached it--

THE COURT: Well now.

MR. SCHIFFER: --within a few seconds.

THE COURT: All right.

Q Did you see any police officer or any policeman generally, signalling to the truck?

A No, I did not.

Q Did you hear any police officer shout or say anything from the time that the truck arrived to the time you made the arrests?

THE COURT: Now, wait. You've covering a long, long area. I think that what you want to know is did you hear any police officer shout anything to anybody on the truck before or at the time immediately when it came to a rest?

THE WITNESS: No, your Honor.

THE COURT: Is that what you wanted to know? Now after it came to rest, then of course, there must have been a gathering and conversation.

Q Did you hear any police officer say anything to the truck driver--

A No.

Q --or to any police officer?

THE COURT: One question at a time. Do the truck driver?

THE WITNESS: No.

THE COURT: Now to the next person.

Q Did you hear any police officer say anything or shout anything to another police officer near the front of the truck?

THE COURT: At what time, when?

Q Immediately after its arrival, after it came to rest?

A No.

Q Now you were standing looking right in that direction, but you don't remember seeing any policemen there?

A No.

MR. SCHIFFER: I have no further questions.

CROSS EXAMINATION BY MR. KAPLAN:

Q Officer, do you have your memorandum pad?

THE COURT: You're inquiring about his memorandum pad covering this incident?

MR. KAPLAN: Yes, your Honor.

Q The next question is do you have any notation dated August 21st covering the incident?

A Yes.

Q Now did you at any time prior to coming to court make reference or refresh your memory as to what is in the book?

A No.

Q Did you look at this prior to coming to court at all?

A No, I didn't.

Q Did you make the entry yourself?

A Yes.

Q May I look at it?

MR. McGINLEY: Will the record reflect that the officer is handing counsel his memorandum book.

Q Officer, did you make out an arrest card on this case in the station house?

A Yes.

Q Do you have a copy of the card with you?

A No, I have it in my book. I copied the arrest record into my book.

Q Into the book, but you don't actually have the arrest card?

A No.

Q Now when you made the arrest card, did you make reference to what is written in the memorandum book, or is the arrest card written prior?

A Prior.

Q And then you made the notations in the pad?

A Yes, sir.

Q How long after the arrest did you make the notation that I'm about to look at that is in the pad?

A The next morning.

Q And did you have any other scraps of paper or any other notes that you refered to and then transposed in this pad?

A Yes.

Q Do you have those papers with you?

A No.

Q What did you do with them?

A I destroyed them.

Q Do you usually destroy the scraps of paper that you make notes on?

A Yes.

Q And then you transpose them to the pad as in this case?

A Yes.

Q With your Honor's kind indulgence. -- Officer, I make reference to the notation in the U.F. 16 here, and may I read a portion of it.

THE COURT: Instead of reading it to him, show it to him.

MR. KAPLAN: I want to make reference to it. May I approach the witness and point it out?

THE COURT: Certainly.

Q Now after naming the defendants, (1) Boyer, (2) Gordon, (3) Vasquez, (4) Schaefer, is that right--

A Yes.

Q --and their addresses, appears the notation, "At ity Hall Plaza on Park Row in the roadway." Now when you ay "in the roadway", you are referring to what?

A Park Row roadway.

Q Is that the roadway that's indicated on efendants' Exhibit A in evidence by the pencil mark that runs hrough City Hall Plaza?

A No.

Q Which roadway are you referring to?

THE COURT: He said he was referring to Park Row.

THE WITNESS: It's the roadway. You got it backwards here. Park Row roadway (indicating).

Q I see. Now there's a further notation here, fficer, which reads, "Arrested the following", dash, then ou have the words, "dis-con dash, refused to move, 722 ub-division 2 and 3", is that right?

A Yes.

Q Now when you say "refused to move", did you ask he defendants that are listed in this pad, in this memorandum ad, to move?

A The Captain asked; I didn't.

Q You didn't ask them at all, the Captain asked?

A He ordered them to move.

Q Well further on in the pad appears the notation, "When they were ordered by Captain Licht and myself to desist and move on", so did you ask them to move too?

A No.

Q If the pad says "and myself", is that an error?

A That's the way I worded it because I was with Captain Licht. He spoke for both of us.

Q But you didn't ask them to move on?

A No.

Q Now when they refused to move on, what did you do? Precisely after they refused to move on? By the way, what did they say, "I refuse to move."?

A No.

Q What did they do?

A They kept chanting and yelling?

Q What?

A "Yeah, yeah."

Q What were they saying?

A I couldn't make out any chant, just "yeah" and "ya".

Q When you say they were chanting, do you know what words they were chanting?

A One word I could catch, "Freedom".

Q And this is all on Park Row in the street; on the sidewalk if there were sidewalks?

A The roadway.

THE COURT: The street is the roadway and the sidewalk is the sidewalk. We'll distinguish with that designation.

Q You tell me where they were, Officer.

A In the roadway.

Q Now they were chanting the word what?

A "Freedom".

Q And while they were chanting did you overhear Captain Licht make the request that they move on?

A Yes.

Q And what did they--that is, the four defendants we're speaking of--do? For example, individually, when Captain Licht made the request, what did Gordon do, if you know?

A I didn't hear what you said.

Q When Captain Licht made the request to move on, as indicated by UF 16, the notation, what did Gordon do?

A Continued with his arms linked.

THE COURT: Continued with his arms linked?

THE WITNESS: Yes, sir.

Q Did he answer the Captain?

A No.

Q How about Boyer? What did Boyer do?

A The same thing. No one answered the Captain.

Q Now other than having their arms linked and chanting the word "Freedom" loudly, were they, did they insult you or the Captain? Did they make any insulting remarks to you?

A No.

Q Did they use any profanity?

A No.

Q Were they argumentative with you? Did they argue with you?

A No.

Q As we understand the wording, did they talk back to you?

A No.

Q So they merely repeated the word "Freedom" with arms linked. Now Captain Licht asked them to move on how many times would you say?

A Twice.

Q Now the first time he said it, did he direct his remarks to any one of the individual defendants, that is, any one of the individual four, or all four of them?

A All of them.

Q Was there generally a noise at this time other than defendants' chanting? Was there other noises, other sounds?

A I don't recollect any.

Q How far was the Captain from the defendants when he told them to move on?

A He was right outside the ring.

Q I see. The defendants formed a ring, is that right?

A Yes.

Q And he repeated that request, is that right?

A Yes.

Q How long after the first time did he repeat it?

A A few seconds.

Q And all the time you were standing there, is that right?

A Yes.

Q From the time you first came on the scene until the time you arrested defendants, how long a time interval would you say passed, from the time you first arrived at the scene until you arrested defendants?

A I couldn't say exactly; perhaps a minute or two, approximately.

Q All right. Now tell me, in that minute or two, other than Captain Licht asking the defendants to move on, did you do anything else? Did you do anything?

A No.

Q Did Captain Licht, other than asking the defendants to move on, say or do anything else?

A No. He said to arrest them.

Q Who said to arrest them?

A Captain Licht ordered me to arrest them.

Q And it's at that point you arrested them?

A Yes.

Q Did Captain Licht tell you what to charge them with?

A Disorderly conduct.

Q Well did he say that?

THE COURT: Did the Captain tell you what to charge them with? What did he say? Give us the conversation.

THE WITNESS: He told me in the beginning, not after I arrested them. When they were in a group he called me over, Captain Licht called me to the group and he says, "I am going to warn these people. I want you to look at them and "listen to it and I want you to arrest them for disorderly conduct."

Q You mean the Captain said this before he approached defendants?

A That's right.

Q He told you that he intended you to have them arrested for disorderly conduct before approaching them?

A If they did not move.

THE COURT: He just said if they did not move.

Q If they did not what?

A If they did not move.

Q When the Captain said this, were the defendants' arms linked at that time?

A Yes.

Q Were they linked?

A Yes.

Q But the Captain hadn't been with the group then, he was talking with you, he was giving you instructions?

A That's right. He called me over and he told me this.

Q All right. Now when you first saw the defendants with their arms linked together, did you approach the group at that time or did you approach Captain Licht?

THE COURT: When you first arrived at the scene?

THE WITNESS: Captain Licht.

THE COURT: You went to Captain Licht and not to the group?

THE WITNESS: Yes.

Q And you had a conversation with Captain Licht, is that right?

A Yes.

Q Now how long after you approached Captain Licht or were speaking with him, did you approach the group, did you go to the group?

A Right then.

Q How far was the conversation you had with Captain Licht from the group, in feet, roughly?

A Approximately five, six feet.

Q And it was immediately after Captain Licht issued these orders to you that you and he approached the group together?

A Yes.

Q Well up to the time that you and he approached the group, were there other police officers around?

A I didn't notice them.

Q Were the boys chanting at that time?

A Yes.

Q Even while Licht was giving the orders they were chanting, is that right?

A Yes.

Q Did you hear them at that time, at the time we're speaking of now, did you hear them use any abusive language?

A No, sir.

Q Then am I correct in saying they said nothing other than the repetition of the chant "Freedom" in a somewhat loud voice, am I right?

A Yes.

Q Now were their voices as loud as I'm speaking now or were they louder?

A Much louder.

Q This is on the outside of City Hall Park, is that right?

A Yes.

Q Then there came a time you and Licht approached them?

A Yes.

Q And then Licht made these warnings or admonitions, whatever they were, and then he turned to you and said, "Arrest them."?

A Yes.

Q When he turned to you and said, "Arrest them", did he tell you what to charge them with at that time?

A No.

Q You knew what to charge them with because he had told you prior to that?

A Yes.

Q And he had told you dis-con?

A Yes.

Q Did he give you subdivision 2 and 3 or dis-con?

A Disorderly conduct.

Q Well who determined on the particular complaint that you signed, disorderly conduct, subdivisions 2 and 3? Who determined that precisely, you or Licht?

THE COURT: Or someone else?

A When we go into the station house we look up the Penal Law and get the correct wording.

Q Who did it in this particular case? Did you go in?

A Yes.

Q Tell me what you do. Did you go to a law book?

A I went to the Desk Officer.

Q And what did you say to him?

A We told him we had these people for disorderly conduct, refusing to move, and he got out the Penal Law and he gives you the subdivision.

Q And he tells you what to charge, is that right?

MR. McGINLEY: Your Honor, I object to this entire line.

THE COURT: Sustained.

MR. KAPLAN: May I see that pad again?

Q If you know, Mr. Dillingham, in this particular case did the Desk Officer look at your arrest card prior to telling you what to charge them with?

MR. McGINLEY: Objection; this all took place after the arrest at the station house.

MR. KAPLAN: Your Honor, it's prior to the formal charge and that's the charge they're put to answering. Now if the officers charges them with a--

THE COURT: Sustained.

MR. KAPLAN: I except. Would your Honor give me just one more moment?

Q Now at the time you first noticed the boys with their arms linked together, where were you; on the traverseway or the pathway that goes to City Hall in front of the building?

A To the right rear of the truck.

Q Now at the time were there passers-by on Park Row going south or north or both ways?

A Yes.

Q Were they in the immediate vicinity, speaking of the vicinity you were in at the rear of the truck; were they in the immediate vicinity of the boys and you at that time?

A Yes.

Q How many people were there, would you say?

A I couldn't say offhand.

Q Now prior to the incident of the truck stopping, before the truck stopped, you were in that area I think you said from one on, is that correct?

A Yes.

Q Or even prior to one. Were you there prior to one o'clock?

A Yes.

Q Well about one o'clock were there people walking south on Park Row?

A Yes.

Q Were there people walking north on Park Row?

A Yes.

Q Were there people walking through the roadway that traverses City Hall Park, indicated on Defendants' A by this double pencil line? Were there people going through here?

A Yes.

Q They're allowed to go through here, they're permitted?

A Yes.

Q But vehicular traffic is not permitted, is that right

A That's right, it's not a thoroughfare.

Q Now that's so, among other things, there are signs that say vehicular traffic is not permitted?

A Yes.

Q Now just prior to the incident of the truck stopping, which would make it about 2:15, am I right, 2:10, 2:15?

A I said approximately 2:30. It could be earlier. I'm not sure.

Q What time do you think?

THE COURT: Approximately 2:30?

THE WITNESS: Approximately 2:30.

Q Just prior to 2:30, meaning five or ten minutes before, fifteen minutes before, at that time were there peder walking in the area in the manner in which I asked you before?

A Yes.

Q Now, if you know how many people, would you approximate, were walking in that immediate area at about 2:30 in the afternoon on this particular August 21st?

A I couldn't say.

Q Well would I be accurate in saying that there would be three hundred people, if you know? Is that an accurate guess?

THE COURT: At one time?

A I couldn't say.

MR. KAPLAN: At one time, your Honor.

THE COURT: At any particular moment that you'd look, would you find three hundred people walking in that general area?

THE WITNESS: No, your Honor.

Q Well would two hundred be more accurate?

A I can't say a figure. People are going by, I don't count them.

Q People walking in all directions?

A Always some about.

Q Prior to the event, the stopping of the truck and the resulting happening that we're talking about, there were many people. Would I be correct in using the adjective, many people were walking in that immediate area?

A You could, yes.

Q Would I also be right if I said that of these people that were walking, some were sitting on benches, some had stopped to talk with each other, is that right, say twenty minutes after two or five, ten minutes before 2:30? Is that right?

A Possible; yes.

Q Now would it further be accurate to say that the advent of the singing did not bring people who normally would not be walking there, they would be walking there anyway; am I right to say that?

A People were walking, yes.

Q Officer, I'd like to show you People's 3 in evidence. Is that a car there?

A The white top, that's a police car.

Q Is that a green and white police car or unmarked?

THE COURT: Is it a marked police car?

THE WITNESS: It's a regular patrol car.

Q Are you certain of that?

A I'm not certain.

Q Could it be an unmarked car?

A It could be, yes. I don't know.

Q Now you were standing--as a matter of fact your photo is here--you were standing about what would be three feet from that car, two feet from that car, is that right?

A That's right.

Q And to the best of your recollection you say that was a marked police car?

A To my recollection.

Q Did you take that much note, because if I told you that it was an unmarked car, is that possible or are you certain it was a marked police car?

A It's possible.

MR. McGINLEY: Objection. There are four statements in that last question of Mr. Kaplan.

THE COURT: Let's not argue. I think it's pretty clear. The officer is not certain. He started off by saying he's not certain.

MR. KAPLAN: I won't pursue it.

Q Did you see any police officers in that car at any time?

A No.

Q How far is that car say from where you're standing?

THE COURT: At the time the photo was made?

A Ten feet.

Q Now just one more, Officer, other than the two admonitions did you hear Captain Licht say anything else to the boys other than the two admonitions that you testified to?

A No.

Q He just said those two and that was it?

A Right.

Q Just a few more questions and I'm through. How long were you and Licht with the boys when their arms were linked? A minute or two you said, am I right?

THE COURT: Prior to the time of arrest.

A It could be a minute.

THE COURT: He said a minute or two; you were correct.

MR. KAPLAN: Thank you, your Honor. No further questions.

MR. SCHIFFER: Your Honor, may I ask a couple of more questions? Just to be quite clear on something.

THE COURT: Gentlemen, of course, I'm going to permit you all the latitude, but don't take it for granted. You can finish your cross examination and then come back for another series of questions. I think you should try to exhaust your questions prior to the time you sit down and then allow the other side to have its re-direct, if it wants any and then you may have re-cross, but this continuous action of asking your questions and stopping and then starting again doesn't make for an orderly trial; but go ahead, I'm going to allow you all the latitude.

MR. SCHIFFER: I'm sorry, your Honor.

THE COURT: It's nothing to be sorry about. I know what happens. I tried one or two cases myself. I know what happens, but try.

MR. SCHIFFER: Yes, your Honor.

CROSS EXAMINATION BY MR. SCHIFFER (Continuing):

Q Officer Dillingham, you said before that there were nine policemen in the photograph. I seem to count eleven. Would you mind counting them again?

THE COURT: Let's not count them together. I think it's up to the Court to decide how many officers there are and I'll make a decision and if I'm wrong you can correct me. -- The Court sees eleven.

Q Now, Officer Dillingham, you are standing in this photograph next to Captain Licht, that is, on Captain Licht's left, is that right?

A Yes.

Q And you are standing to the right of another police officer who has his mouth open and is pointing his finger?

A Yes.

Q Do you know who that police officer was?

A No.

Q Do you recall what he was obviously saying?

A No.

Q You do not. Now finally, you notice the police officer on the extreme left of the photograph?

A Yes.

Q Now he has his hand on the shoulder of the defendant you have marked with a V, is that correct?

A Yes, there is a hand on him, yes.

Q Do you know what police officer that was? He was standing directly across from you, you have a full view of his face.

A No, I don't.

Q Does it not appear to you that that defendant was then under arrest?

MR. McGINLEY: Objection, your Honor.

THE COURT: Sustained.

Q Officer Dillingham, does it appear that the officer--did you see that officer restraining that defendant with his arm, with his hand on the defendant's shoulder?

MR. McGINLEY: Objection, your Honor.

THE COURT: The exhibit speaks for itself; sustained.

MR. SCHIFFER: No further questions, your Honor.

MR. McGINLEY: I have no other questions.

BY THE COURT:

Q May I ask this question: With respect to the numbers of people there, you said that there were a great number of people, many people, before they had gathered, before the defendants gathered, passing through the park?

A You could say many, yes, sir.

Q Now as this truck pulled up and this incident began, did any of these normal group of pedestrians leave the route usually taken and congregate at this scene?

A Yes, sir, they did.

Q How many congregated?

A I couldn't say. I'd say about ten or fifteen gathered when the truck first started throwing the--

Q And then was the number gathered thereafter lesser or more, if it changed?

A More.

Q During this incident, what would you say is the maximum number of people that gathered?

A I couldn't say. As soon as I came down I saw the people gathered and as I came through here they began gathering in the roadway.

Q Are you talking about people who walked by or people who had stopped to watch?

A People who stopped to watch.

Q Now there were a great many people that kept on walking that didn't watch, is that right?

A That's right, your Honor.

Q Now these people that you say stopped to gather to watch, were these the people who were watching the demonstration that took place right near by?

A I wouldn't know, your Honor.

Q Well how far were the other demonstrators that you referred to, how far in feet were they from the rear of this truck?

A Forty, fifty feet in front of the truck.

Q In front of the truck?

A Yes, your Honor.

Q Was there another group of people watching the demonstration forty or fifty feet in front of the truck?

A I don't know. They walked by, they stop a second and continue.

Q The people that you referred to, the ten or fifteen people, did they merely stop, take a glance and continue?

A Yes, when the refuse was coming off.

Q Did any of them stop for a minute, if you noticed?

A I didn't stay that long, your Honor. I came to the back of the truck, I walked past them.

THE COURT: All right.

MR. SCHIFFER: No questions, your Honor.

MR. KAPLAN: No questions, your Honor.

MR. McGINLEY: Step down.

MR. SCHIFFER: Thank you, Officer Dillingham.

THE COURT: Thank you, you've been very helpful.

MR. KAPLAN: Your Honor, may we have just five minutes?

THE COURT: Certainly. Recess.

(A recess was had.)

THE COURT: Next witness.

PATROLMAN BERNARD HOUSTON, Shield No. 5462, assigned to the 5th Police Precinct, called as a witness by the People, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McGINLEY:

Q Were you on duty on August 21, 1963?

A I was.

Q About two o'clock in the afternoon, where were you stationed?

A On Park Row near the entrance of City Hall Plaza.

Q Tell us what you saw at or about that time?

A At about 2:30 p.m. I saw a red truck coming up Park Row. I saw this truck stop at a distance from me. When it stopped, I stpped out--

Q Officer, where did it stop? You say a distance from you?

A On Park Row around thirty, forty feet away from me.

Q Was that in front of City Hall Park?

A Yes.

Q Now when you say the truck stopped, what did you do?

A I stepped out and I raised my hand to call my attention to the driver and I waved him over to the side.

Q Who was driving the truck?

A Cannon, George Cannon.

Q Is that man in the courtroom?

A Yes.

Q Point him out.

A The last man on the end.

THE COURT: You say it stopped at where when you first saw it?

THE WITNESS: On Park Row proceeding south.

THE COURT: At where? Park Row is a long street.

THE WITNESS: Right. Between Chambers and City Hall Plaza.

THE COURT: How far from City Hall? You mean the entrance of City Hall Plaza?

THE WITNESS: I was at the entrance of City Hall Plaza. It was about thirty or forty feet away from me.

THE COURT: That would be thirty or forty feet north of the entrance?

THE WITNESS: Yes.

Q Now when you stpped into the roadway, what did you do?

A I raised my hand to call my attention to the driver and when I thought he had my attention I waved him over to the side.

Q Now waving him over, what does that constitute? Withdrawn. When you waved him over, where did he go, if anywhere?

A He went at an angle towards City Hall Plaza, where I had waved him.

Q And was the truck parked there?

A Then he had stopped his truck at an angle, facing into the Plaza.

Q The truck was facing into the Plaza?

A Right. The front was pointed towards the Plaza.

Q What happened then after the truck stopped after you pulled it over?

A Well as I was walking around to the driver's side of the truck, I immediately saw objects spilling out from the other side over the top of the truck.

Q Were they spilling or being thrown?

A Being thrown.

MR. SCHIFFER: I object, your Honor.

THE COURT: Sustained, unless you saw it. Did you see somebody actuall lift these and throw them?

THE WITNESS: Yes.

THE COURT: The decision is vacated and the objection is overruled. Go ahead.

Q Can you identify the person you saw throwing them?

A No, I couldn't.

Q What did you do after you saw these objects being thrown from the truck?

A Well I started talking to the driver. I asked him if he had a license to cart garbage. He said, "No." I asked him does he have a license and registration. He said, "Yes." I asked to see his license and registration, he gave them to me. After he gave them to me he stepped out of the truck. We walked around the front of the truck and I told him

I would have to give him a summons for the unlicensed caring of garbage.

Q And you gave the defendant Cannon a summons for that?

A Yes.

MR. KAPLAN: Well I object and move to strike that, your Honor. It's immaterial, it has nothing to do with the issues before the Court.

THE COURT: Sustained. Strike out he gave him a summons.

Q Did you go with Cannon to the station house?

A Yes.

Q How was he taken to the station house?

A By an unmarked radio car.

Q Did you have any conversation at all with Cannon as regards the demonstration?

A None, sir, no.

MR. McGINLEY: All right, I have no further questions of this witness, your Honor.

BY THE COURT:

Q Before you start the cross examination, you say that the truck stopped at the City Hall Plaza at the ntrance to the Plaza, after you waved it over?

A Yes.

Q You said then you saw some debris or material being thrown over the side?

A As I was walking to the front of the truck to the driver's side--a spring was the actual thing I saw come over the side of the truck.

Q Now what time elapsed between the time you stopped the truck and you saw this material come off the truck?

A Thirty seconds to a minute or so, not even that much.

CROSS EXAMINATION BY MR. KAPLAN:

Q Do you have your memorandum pad with you, Officer?

A Yes.

Q May I see the portion of the pad that makes reference to August 21st, particularly the events we're speaking of?

THE COURT: May I ask one question? May I interrupt you? With your permission I'd like to clear something up.

BY THE COURT:

Q You said you arrested Cannon?

A No, sir.

Q You put him into the truck?

A Into the radio car and we went to the station house, yes, sir.

Q Did I understand you also to say that you gave him a summons? Did you give him a summons or did you arrest him, which or both?

A I gave him a summons and the crowd was large and noisy, newspaper men were around. The truck had been taken to the station house and Cannon was the operator of the truck, so I was ordered by a superior to take him to the station house, away from the scene with the crowd.

Q Well had you arrested him at the time? You took him into custody, is that correct?

A Well I asked him to come into the radio car, we're going over to the station house.

Q If he hadn't obeyed, you would have done what you do in any ordinary arrest, would you not?

A Well he wasn't arrested. I hadn't arrested him.

Q When you take somebody in custody, isn't that tantamount to an arrest?

MR. McGINLEY: Your Honor, I believe this was a summons in lieu of arrest that Cannon received from the officer.

Q What I want to know, I heard him say he received a summons and then he took him into a radio car. When you give

give a summons, we understand you hand a summons to a defendant and he's free to go, but here he says he took him into a radio car, which to my mind indicates an arrest. Now was it a summons and an arrest?

A No, sir. I gave him one summons and I was to give him another summons.

Q Then you took him to the station house for the purpose of giving him another summons?

A Yes.

THE COURT: I understand now.

MR. KAPLAN: May I just read this a moment, your Honor?

THE COURT: Yes.

CROSS EXAMINATION BY MR. KAPLAN (Continuing):

Q Officer, I draw your attention to a notation in your UF 16, which reads this way: "2:30, truck stopped on Park Row twenty-five feet in", which is north?

A Yes.

Q Of City Hall Plaza. "Asked driver to pull aside", is that right?

A Yes.

Q Now that was 25 feet north of this curbing as shown in Defendants' B, is that right, north of this curb?

A Yes. I was approximately in this vicinity over here, say five feet off this curb.

THE COURT: And where was the truck?

THE WITNESS: It was north. It was over here, coming down this way, the middle of the roadway.

Q Heading south?

A Right. I saw it stop. It pulled over at an angle.

Q It pulled over at an angle, meaning like this?

A This way.

THE COURT: Would it be facing southwest?

THE WITNESS: Southwest, right.

Q May I ask you, Officer, if the truck had continued on its course after it stopped, would it have gone through this areaway that goes through City Hall Plaza?

A No.

Q Where would it have gone, in which direction?

A Straight south.

Q Now what time did you arrive in that area in the morning, Officer? What time of the morning did you get there?

A I'd like to see my memo book, if I may please, to refresh my memory. Eight p.m. at City Hall basement. Eight a.m.

Q Now as indicated by your notation, Officer, you stopped the truck 25 feet north of City Hall Plaza, is that right?

A Well approximately 25, 30.

THE COURT: He said 30 or 40 according to my notes.

Q I make reference again to the notes here. Does the note indicate 25 feet north?

A Twenty-five feet, right.

MR. McGINLEY: But I thought also, if I heard counsel, that the officer stopped the truck. I believe the officer testified and the notes so stated, that the truck stopped, then he waved it over.

THE COURT: Correct. As I understand it, the truck stopped in the highway, on Park Row.

THE WITNESS: Yes.

Q Well did it stop, Officer, pursuant to your direction, to your waving, or did it merely stop dead 25 feet north of your position in City Park Plaza?

A It stopped by itself. I was on the side when it stopped.

Q Now were there any other officers in the area of the truck when it first stopped?

A I didn't notice.

Q And then after it stopped you waved it on in the direction in which you testified prior to this, is that right?

A Yes.

Q Did it come to a complete halt or did it slow down 25 feet north of your position?

A I would think it stopped, yes.

Q And about how long had it stopped when you waved he driver on? A second, two seconds, five seconds?

A A very short while; five, ten seconds.

Q You saw the truck headed south on Park Row, you were watching it, is that right?

A Yes.

Q Did you go to meet the truck at all, that is, did you walk in a northerly direction prior to the truck stopping, or did you just stand where you were?

A I stayed where I was before it stopped.

Q But then as you waved, you walked toward it, is hat right?

A Yes.

Q Now you approached Cannon who was driving, is that right?

A Yes.

Q And you told him, in effect, that you wanted the truck placed in a certain spot, you told the driver a particular spot, is that right?

A No, I just told him to pull over to the side.

Q Indicating that area of City Hall Plaza where it ended up?

A Yes.

Q In other words, he went there because you told him by signs, by words or voice, where you wanted him to go?

THE COURT: Is that right?

THE WITNESS: Yes.

Q Now you had pre-determined the place where the truck was to be placed, you knew before that is, where you would order it to go, is that a fact?

A No.

MR. McGINLEY: Objection, your Honor.

THE COURT: His answer was no.

Q Now when you went to work in the morning, did you know that there would be a truck with debris coming for a demonstration? Did you know anything about it?

A Not at eight o'clock.

MR. McGINLEY: Objection. The officer's state of mind is not relevant.

MR. KAPLAN: I'm asking about a fact.

THE COURT: It's a question did he know a fact or not. Overruled.

Q Did you know?

A Not at eight o'clock in the morning.

Q Did you know it prior to twelve noon?

A No.

Q May I show you a notation in your book, Officer. Does it say eleven a.m., Tenants Association pickets City Hall Plaza?

A Yes.

Q What does that mean?

A There was this association that picketed up and down on City Hall Plaza.

Q Does that indicate or does it not indicate a truck was coming too?

A No.

Q At what time did you know a truck was coming?

A I'd say around one p.m.

Q How long before you actually saw the truck was that?

A Approximately an hour and a half.

Q And how did you know it was coming?

A Somebody said, "Here comes the truck."

Q I beg your pardon.

A Some person behind me said, "Here comes the truck" and I looked up and I saw the red truck.

Q No, the red truck came at 2:30?

A Right.

THE COURT: Around what time did you know a truck was coming?

THE WITNESS: Around one p.m.

THE COURT: Who told you, how did you find that out?

THE WITNESS: I was down in City Hall, the basement and it just filtered through. There was four or five patrolmen down there.

Q And what were they saying?

A Well I don't know who had told me.

Q But at any rate you knew a truck was coming?

A I knew a truck was coming.

THE COURT: Excuse me. Had anybody in

official capacity given you official information that it was coming?

THE WITNESS: No, sir.

THE COURT: Do you intend to convey the impression that this was not official, that it was merely scuttlebut?

THE WITNESS: I don't know who had said it. Somebody had said a red truck is coming to dump garbage. I heard it from somebody. I don't know who it was, a patrolman or a captain.

Q Well it was enough of an official remark for you to put it in your memorandum pad because here in the notation two o'clock, you say, "City Hall Plaza, two o'clock, red truck to dump garbage." Did you put it down on the basis of a rumor or--

A No, at two p.m., a sergeant had told me.

Q What did he tell you at two p.m.?

A He told me a truck was coming to dump garbage and he told me to issue a summons if it comes my way.

Q So you were told to issue a summons a half an hour before the truck arrived?

A Yes.

Q And you were told to issue a summons a half hour before you knew whether in fact the driver, Cannon, had a license to cart garbage or did not have a license to cart garbage?

A That's right.

Q And you were given these instructions by a sergeant?

A Yes.

Q Who is this sergeant?

A Sergeant Olmstead.

Q Is that the 5th Division?

A Fifth Precinct.

Q I'm sorry, and what else did he tell you about giving the driver a summons?

A He told me what section the violation was under.

Q He even told you the section it was under?

A Yes.

Q And what else did he say?

A He says if it comes up and it stops, issue it a summons, he has no license.

Q Which is what you did?

A Yes.

Q Now at no time--and I think in part his Honor asked you about the same question--at no time did you arrest Cannon, did you?

A No.

Q You took him to the station house in order to enable you to write another summons, is that right?

A Yes.

Q And you took him to the station house because it was too noisy in the area where you were at that time, is that right?

A Yes.

Q Otherwise you could have written the second summons out right then and there, which is what you would have normally done?

MR. McGINLEY: Objection.

THE COURT: Sustained.

MR. KAPLAN: I'll rephrase it.

THE COURT: It's customary when issuing a summons to issue a summons at the site of the infraction instead of taking the defendant to the station house, is that right?

THE WITNESS: Yes.

THE COURT: And you would have followed this custom if it were not for the intervention of these conditions which you described?

THE WITNESS: Yes, all the conditions there.

THE COURT: All right.

Q Now you were told by a superior officer to take annon away, is that right?

A Yes.

Q Who told you to do that, if you know?

A I don't know what superior officer.

Q You don't know which superior officer told you?

A No, sir.

Q You remember the truck was 25 feet away from you, t was north of your position, you remember that, don't you?

A Yes.

Q You remember waving the defendant Cannon over?

A Yes.

Q But you don't remember what superior officer asked ou to take him away?

A No, sir, there was a lot of confusion.

Q Now when Cannon got out of the cab of the truck, were you with him?

A Yes.

Q Had you already given him the summons?

A No.

Q You had not yet written it, is that right?

A No.

Q Did you take him some place?

A Around to the side, the other side of the truck.

Q And at that point you wrote the summons?

A Yes.

Q And you handed it to him?

A Yes.

Q And then what did you say?

A Well by the time I had it all written out--I didn't hand him the summons because I still had it tucked in my memo book. I was told to take him to the station house. The radio car was there, we got in the car.

Q And so that's what you did?

A Yes.

THE COURT: Now do I take it then that you did not give him a summons?

THE WITNESS: I had it all written out, it was finished completely.

THE COURT: You had not served it upon him?

THE WITNESS: No.

THE COURT: And you tehn took him to the station house?

THE WITNESS: Yes.

THE COURT: And you served it there?

THE WITNESS: Yes.

Q Did he tell you, "I don't want to go with you."?

A No.

Q Did you tell him to accompany you to the Precinct?

A I don't know what words I used.

Q But in substance?

A Yes.

Q And he said what?

A I don't remember what he said. He came, he didn't resist, he didn't say he didn't want to or anything like that.

Q He didn't say, "Are you arresting me?"

A No.

Q Did he say, "Are you arresting me", when you were in the Precinct?

A I think he may have asked me is he going to be arrested.

Q And what did you say?

A I said I didn't know if he would be arrested.

Q As a matter of fact, do you know, was he arrested?

A I didn't know till the next day that he was arrested. I had left the station house.

Q So you had nothing to do with an arrest, if in fact there was one?

A No.

Q Now is it not a fact, Officer, that had you not directed the truck to the point in City Hall Plaza where you had directed the truck to go, that he would not have gone, he went there pursuant to your command, is that right?

MR. McGINLEY: Objection.

THE COURT: Sustained, as to the first part.

Q Did the driver go to the City Hall Plaza and park the truck pursuant to your command to do it?

A Yes.

Q Did he tell you that, "I'm on my way to the Municipal Building, I don't want to park at City Hall" or "I don't want to go to City Hall."? Did he ever say that to you while you were talking to him?

A I don't remember, no.

Q Did he ever say anything like that in substance?

A No, I don't remember any conversation I had at that time.

MR. KAPLAN: I have no further questions, Judge.

CROSS EXAMINATION BY MR. SCHIFFER:

Q Just a couple of points I'd like you to clarify, Officer, please. At the time that you got in the truck, or onto the truck or waved the truck in, whichever it may be, did you know what was in the truck?

A Well I had been told.

Q Did you know of your own knowledge?

THE COURT: Were you able to see what was in the truck?

THE WITNESS: No.

Q The front and sides of the truck are solid?

A Right.

Q And a number of feet high?

A That's right.

Q So that you could not see in?

A That's right.

Q No part of the cargo was projecting over the top?

A No.

Q Did you see the truck at any time with a left turn blinker on?

A No, I didn't notice.

Q You didn't notice?

A No.

THE COURT: The question was did you see a left-turn blinker on. Do you know whether it was on or not or don't you know whether it was on or not or didn't you see?

THE WITNESS: I didn't notice if it was on. I didn't see a left-turn blinker. It could have been on.

THE COURT: That's your answer; you didn't see it.

Q But it could have been on?

A Right.

Q Now I show you the map which is Defendant's Exhibit A. Now on that map is an X which marks roughly the position where the truck stopped. Now it stopped after you had directed it into the curb, or rather into the barricade. Now at the time you say it stopped some 25 feet north of that point, where was it, in the middle of the roadway, the left lane, the right lane, where was it?

A About the middle of the roadway.

Q The middle of the roadway. Now how wide is the roadway there leading south?

A I'd say about three or four lanes.

Q Three or four lanes. Would you put it then in the second or third lane from the City Hall Park curb?

A I don't believe there are any marked lanes, but it would be about the middle of the road.

Q About the middle of the road. Now at a point approximately opposite Spruce Street on that map, is there a break in the fence which divides the southbound roadway from the northbound roadway?

A Yes.

Q Is one permitted to make a left turn there?

A Yes.

Q Was there at the time the truck came to a stop anything, person or vehicle, in front of the truck?

A I don't remember.

Q Was there anything to the truck's left?

A Yes. I think there may have been an automobile on the left.

Q Was that an unmarked police car?

A I don't know.

Q You do not know. You did not see the occupant?

A No.

Q If the truck had wanted to bear to the left to make a left turn, would it have had to come to a stop at about that point?

MR. McGINLEY: Objection, your Honor.

THE COURT: Overruled.

MR. McGINLEY: It's sheer speculation on the officer's part.

THE COURT: No, overruled. It's a physical fact he's trying to describe.

A Well at that point he couldn't make a left.

THE COURT: Under the traffic conditions which you described, with the car to its left, would the truck have to come to a stop under the then existing conditions before it could make a left turn?

THE WITNESS: No.

Q Or would it have had to slow down substantially in order to get to the left lane to make its turn; in other words, allowing the car on its left to get by?

MR. McGINLEY: Your Honor, I object to this. The is speculation once removed from the other question.

THE COURT: Overruled. Let's put it this way. Was this car being operated in a manner in which an ordinary operator of a motor vehicle would operate in order to make a left turn, under the then described conditions?

THE WITNESS: No.

Q Did the truck make any right turn signal?

A No, not that I noticed, no.

Q Did the truck bear right before stopping?

A No.

Q Did you see any policeman on the sidewalk on the north of that X before the truck came to a stop?

A No, I didn't see any.

Q Did you see any policeman on the sidewalk in front of the Municipal Building?

A No, I didn't see any.

Q --which is that odd-shaped building at Chambers?

A No.

Q Did you see any policeman at the corner of Chambers and Centre Street?

A No, I didn't see any.

Q Did you see any policeman to the south of that X?

A No, I didn't see any.

Q How many policemen were in the basement of City Hall where you say you were from eight o'clock on, or part of the time from eight o'clock on?

BY THE COURT:

Q How many times did you go down to the basement during the course of the tour of duty from eight until one?

A Quite a few times I was down there.

Q On each occasion that you went down, did you see a number of policemen in the basement?

A I can't recall how many there were.

Q Did you see a number of them?

A There were others.

Q Do you know how many?

A No.

Q Were there more than five on each occasion or less than five?

A I don't recall.

Q Could there have been ten on each occasion? Or could there have only been two or about two?

A It might have been closer to two than ten. I don't remember.

CROSS EXAMINATION BY MR. SCHIFFER (Continuing):

Q Now we've been talking about the time. At that point where the truck stopped, you say 25 feet north of where you finally directed it, and at that point you saw no policeman on the north, no policeman on the south--

THE COURT: You didn't question him about the south, as far as I remember.

MR. SCHIFFER: Yes, your Honor, the record will show I asked whether there were any policemen south.

THE COURT: Were there any policemen south of where you were standing before the truck stopeed?

THE WITNESS: I don't know.

Q You don't recall seeing any. Now you waved the truck in. At that time where was the officer, the superior officer who had ordered you to give it a ticket?

A He had left.

Q He had left?

A Yes.

THE COURT: You're speaking of Sergeant

Olmstead?

THE WITNESS: Sergeant Olmstead, yes.

Q Now where at that time was there any captain or lieutenant or inspector or deputy inspector or sergeant on the scene?

THE COURT: At the time he stopped him?

Q At the time that you had directed the truck in.

A I don't remember who was on the scene at that time.

Q At that particular time were there any other policemen present?

A There were others, yes.

Q How many other policemen were present?

A I have no idea how many.

Q Were there five?

A I don't know.

Q Were there ten?

A I couldn't speculate.

THE COURT: Well there were more than two, right?

Q There was yourself and there was somebody else, at least?

A Yes.

Q Was there a License Department Inspector on the scene?

THE COURT: Do you know of any License Department Inspector?

THE WITNESS: I don't know.

Q Did a License Department Inspector join when you were writing the ticket for Mr. Cannon?

A Some person joined me.

Q Some person also writing a ticket?

A Yes.

THE COURT: Was he an official?

THE WITNESS: Yes, he was writing out a ticket. I didn't know if he was from the license or Health Department or what department.

THE COURT: Did he show you any identification?

THE WITNESS: No, he didn't.

THE COURT: You didn't ask him for any?

THE WITNESS: No, I didn't.

THE COURT: Had you been advised in advance that there were to be representatives of other City Departments?

THE WITNESS: No, I didn't know who was going to be there.

MR. SCHIFFER: No further questions.

THE COURT: I think this is a good time to break. The Officer is excused. Thank you. Tomorrow morning at 9:30. The same bail conditions. Tomorrow at 9:30 a.m. and we're going to have the same Court Attendant too.

--ooOoo--

The above is a correct transcript
of the minutes taken in this case.

Arnold S. Rothbart C.S.R.,
Official Court Reporter.

30M-709688(62)

COURT REPORTER'S MINUTES

Criminal Court of the City of New York

Part 1-C-1, County of New York

THE PEOPLE OF THE STATE OF NEW YORK
on the complaint of

[illegible] [illegible], [illegible]
[illegible], [illegible] HALL,
[illegible] [illegible], JOHN [illegible],
[illegible] [illegible], [illegible]
[illegible], and [illegible] [illegible],

Defendants.

BEFORE
Hon. GEORGE [illegible] [illegible]
Judge.

(From 12:30 p.m.) September 3, 19[illegible]

CHARGE Disorderly Conduct and Violation of the Vehicle and Traffic Law

TRIAL (or) HEARING Trial (Continued)

APPEARANCES:
For the People [illegible] [illegible] [illegible], Esq., Assistant District Attorney
For the Defense [illegible] [illegible], Esqs. and [illegible] KAPLAN, Esq.

WITNESS	DIRECT	CROSS	RE-DIRECT	RE-CROSS
Witness for the People				
Patrolman George Dillingham	1	14		

[illegible] [illegible], C.S.R.
Official Court Reporter

(The trial was continued at 12:30 p. m., September 3, 1963.)

BY THE COURT:

Q When you got there, after the lapse of this minute--

A Approximately, a minute.

Q (Continuing) you saw this group? A Group at the rear of the truck.

THE COURT: Now repeat your question.

BY MR. McGINLEY:

Q Are any of the people you saw in that group in the Courtroom today, and if they are, point them out?

A The first row, the four men in the front (indicating).

THE COURT: The four men in the front, and they would be--

(To the defendants indicated) Will you give you names as you go down the front?

DEFENDANT ALEXANDER BOYER: Boyer.

THE COURT: Next man (indicating)?

DEFENDANT STEPHAN GORDON: Gordon.

THE COURT: Next man (indicating)?

DEFENDANT JON SCHAEFER: Schaefer.

THE COURT: Next man (indicating)?

DEFENDANT ANTONIO VASQUEZ: (through interpreter) Vasquez.

BY MR. McGINLEY:

Q Were there more than just those four in the group?

A Yes, there were.

Q And are any of those people in the Courtroom? A I recognize one: the gentleman in thh second from the left, in the rear, with the goatee.

THE COURT: What is your name, sir (indicating)?

DEFENDANT JOEL FREEDMAN: Freedman.

BY MR. McGINLEY:

Q In what tone of voice were these defendants singing and chanting?

A Loud and boisterous.

Q And do you recall anything they said particularly? A The one word I could make out was "Freedom".

Q Were all of the five of these defendants that you pointed to saying something or chanting something? A The four I can say yes; the other, I didn't; more or less, his back was to me.

BY THE COURT:

Q You mean--referring to Freedman?

A Outside of Freedman.

Q The fellow whose back was to you--

A Would be Freedman.

Q And--

A And the other four were all shouting something.

THE COURT: Very good.

BY MR. McGINLEY:

Q Were there any pedestrians in the area?

A Yes.

Q How many do you approximate? A Was, approximately, thirty.

Q What were those thirty people doing while defendants sang and chanted? A Closing in--getting closer--flowing out into the roadway--obstructing traffic that was flowing south on Park Row.

Q What was the condition of traffic on Park Row at the time--at the time that the singing and chanting--was taking place? A Was practically stopped then.

A Was practically stopped then.

MR. McGINLEY: May I have this picture marked "People's 3 for identification," your Honor (indicating)?

THE COURT: So marked.

(Picture referred to received for identification and marked, "People's exhibit 3.")

BY MR. McGINLEY:

Q Officer, I show you People's exhibit 3 for identification and I ask you if it is a fair and accurate representation of the scene that you have just described to the Court?

(The picture referred to was handed to the witness.)

A Yes.

MR. SCHIFFER: There is no objection to this picture.

THE COURT: Marked, "People's exhibit 3." That would be 2, not 3.

MR. McGINLEY: I had another picture marked "People's 2 for identification," but it was never entered. I intend to offer it later this morning.

THE COURT: This is 3.

(The picture referred to received in evidence and marked, "People's exhibit 3.")

THE COURT: Proceed.

BY MR. McGINLEY:

Q The Captain did come over to this group--to these defendants--who were singing and chanting?

A Yes, he did.

Q Were you there at the time? A Yes, he called me over.

Q Did you hear Captain Licht say something to the defendants?

A Yes.

Q Will you please tell the Court what you heard said?

MR. KAPLAN: Objection. That is

hearsay.

MR. McGINLEY: Your Honor, I am not offering it for its truth, but merely that it was said to these defendants.

MR. KAPLAN: I object. It is hearsay. It is not an exception.

THE COURT: Is your question what Captain Licht said to the defendants?

MR. McGINLEY: Yes, your Honor.

THE COURT: Can you tell us which defendants he addressed his remarks to?

MR. McGINLEY: To this group as described by the Officer.

THE COURT: Binding upon this group only, and your objection overruled.

MR. KAPLAN: I beg your pardon. Binding on this group?

THE COURT: Yes.

MR. KAPLAN: Group--meaning who?

THE COURT: Boyer, Gordon, Schaefer, Vasquez, and Freedman; is that correct?

MR. McGINLEY: That is correct.

MR. KAPLAN: How can the witness testify to what Captain Licht told these men? That is pure hearsay.

THE COURT: He was there and heard it.

MR. KAPLAN: But it is pure hearsay. He is repeating what somebody else said, whether it is given for the truth or otherwise.

MR. McGINLEY: It is only given for the purpose of showing it was said, not as to its truth.

MR. KAPLAN: I except, your Honor.

BY MR. McGINLEY:

Q Officer, what did you hear Captain Licht say to these five defendants? A He said, "You are being disorderly. If you don't stop what you are doing and move on, you will be placed under arrest."

Q Was anything else said? A He said it again. He repeated it a second time, and he said to me, "Officer, arrest them."

Q What, if anything, did defendants do--the five specific defendants to whom this statement was addressed by Captain Licht--after the first time he said it?

A It was one man in that group.

Q Is that man in the Courtroom?

A He is not, no.

Q What, if anything, did any of the defendants who are in this Courtroom do? A After the first time Captain Licht spoke, he said, "I cannot stand an arrest."

And he left the group.

Q Who did?

A This man; I do not know who he was in the group.

MR. KAPLAN: Your Honor, I object.

THE COURT: Sustained.

MR. KAPLAN: I move to strike it out.

THE COURT: Strike it out.

BY MR. McGINLEY:

Q What, if anything, did these five defendants who were in the group say after Captain Licht's first admonition?

A Nothing. They continued chanting and shouting.

Q Then he said it again? A The second time, yes.

MR. KAPLAN: I object to it. Pure hearsay and leading.

THE COURT: Overruled; same ruling as before and for the same purpose.

BY MR. McGINLEY:

Q What, if anything, did these five defendants do after Captain Licht's second admonition? A They continued chanting and shouting.

Q What did you do then?

A I then stepped in and untangled their arms from one another and took the four defendants sitting here.

Q Were you able to untangle their arms?

A Yes.

Q Did you have any conversation with all or any of the defendants at the time?

A No.

Q Officer, I show you People's exhibit 2 for identification and ask you if that is a fair and accurate representation of the scene after you had placed the defendants under arrest, and by scene--I mean the area of Park Row and City Hall Plaza?

A Yes, it is.

MR. KAPLAN: What time is this?

MR. McGINLEY: After he had placed the defendants under arrest--the defendants that he had placed under arrest--which was, approximately, two-thirty, according to the Officer.

THE WITNESS: Approximately, two-forty.

MR. McGINLEY: I ask that this be marked, "People's exhibit 2 in evidence," your Honor. Show it to counsel (indicating).

(Both Mr. Schiffer and Mr. Kaplan looked at the picture referred to.)

MR. KAPLAN: May we have a voir

dire before its acceptance?

THE COURT: Go ahead.

EXAMINATION ON THE VOIR DIRE

BY MR. KAPLAN:

Q Officer, this is a photograph of the scene taken what time?

BY THE COURT:

Q This is a photograph taken of the scene at what time?

MR. KAPLAN: I object to that. The Officer didn't take the picture.

THE COURT: Can you identify when the picture was taken?

MR. McGINLEY: That is what my questioning was directed at.

THE WITNESS: No, sir; I couldn't tell.

BY THE COURT:

Q Do you know what time? A When I made the arrest, approximately, two-thirty, this rubbish was on the ground then (indicating). The truck was still there.

Q Is this scene what it looked like?

A Yes.

Q Is that a fair representation? A The truck isn't there; that's all.

Q All right.

A It must have been--I don't know when the truck was taken away. I arrested the prisoners--the men here--when the truck was still there.

Q And this is what the street looked like--

A Yes.

Q (Continuing) except for the truck?

A Yes, your Honor.

Q Does that fairly represent the debris that was in the street?

A Yes.

Q Immediately after the arrest?

A Yes.

THE COURT: You may ask him.

BY MR. KAPLAN:

Q Was the truck taken away, you say? The truck is already taken away?

A It must have been moved. It is not there.

BY THE COURT:

Q Supposing it were taken from the side of the truck? A No, it can't be. It is at a different angle. The truck was right alongside of the debris. Some of the debris was almost touching the truck.

BY MR. KAPLAN:

Q So the truck had to be removed to take away the debris?

A According to that, yes.

Q The debris--this is the precise scene--do you remember the precise scene--with the debris in the way it is pictured here?

MR. McGINLEY: All he has done is identify it as a fair representation. That is different from an exact scene.

THE COURT: That is correct.

MR. KAPLAN: No further questions, and there is an exception to its admission.

THE COURT: You are a little premature. I haven't ruled, either.

MR. McGINLEY: I offer it, your

Honor, as People's exhibit 2 in evidence.

THE COURT: It will be accepted as People's exhibit 2 in evidence and it may be so marked. Objection by defense counsel Kaplan.

MR. McGINLEY: I have no further questions of this Officer at this time.

THE COURT: May I see 2 and 3, please?

(The exhibits referred to were handed to the Court.)

BY THE COURT:

Q I show you this People's exhibit 3 and ask you to point out where, if any place, you were on the picture (indicating)? A Right here, sir (indicating).

Q You are standing about the middle, to the rear of the truck; is that correct?

A Yes, your Honor.

Q Now, can you take the pen and place an initial on the bodies or heads of the defendants whom you can identify, if any? Just place the first initial?

(The witness wrote on the picture referred to.)

THE COURT: Now get a pen that will write on this; need a very fine point. Here is a red pencil;see if that will help any (indicating).

(The witness wrote on the picture referred to.)

THE COURT: No, that doesn't help.)

(At this point another pen was given to the witness.)

(The witness wrote on the picture referred to.)

THE COURT: Now, if you gentlemen will come up, we will show you the identification, so that we may all understand it. The last initials of each defendant in order. "G" stands for Gonzalez.

THE WITNESS: There is no Gonzales there. That's Gordon and Boyer (indicating).

THE COURT: Those initials are the initials of the last names of the respective defendants; is that it?

THE WITNESS: Yes.

MR. McGINLEY: I have no further questions to ask Officer Dillingham at this time.

MR. SCHIFFER: Will you give that to the witness (indicating photograph)?

(Court Officer Max Diamond handed the photograph referred to to the witness.)

CROSS-EXAMINATION

BY MR. SCHIFFER:

Q Officer Dillingham, would you be kind enough to count the number of policemen appearing in that photograph?

A Policemen?

Q Yes, policemen--policemen--police officers, police personnel?

A Nine.

Q Nine.

MR. SCHIFFER: Could we mark this

with a "P"?

THE COURT: They are in uniform, I think.

BY MR. SCHIFFER:

Q Are there any police personnel not in police uniform? A I don't recognize any without uniform.

Q Could you identify those policemen by name and by--

A I can identify two. That's myself and Captain Licht.

Q Would you be kind enough to put an "L" on Captain Licht?

A Shall I put it on the face?

Q Put it on his arm.

A It is a black uniform. It is hard to see (indicating).

(The witness wrote on the photograph referred to.

Q Now, would you say--can you see--your own picture?

A Right here (indicating).

Q Could you put a "D" on yourself?

A Right.

Q Now, do you recognize any of the other policemen?

A No, I do not.

Q Are any of them from the 5th Precinct?

A Well, the ones that I can see, they look like traffic men--the two in the back--I cannot see their caps. I can't see their faces.

Q But you do not recognize any of the traffic men?

A No, sir.

Q Do you recognize any reporters or cameramen in that photograph?

MR. McGINLEY: Your Honor, I object to that, on the ground of relevancy--

THE COURT: Sustained.

MR. McGINLEY: (Continuing) to use the vernacular--so what?

MR. SCHIFFER: If the Court pleases, this charge is did cause a large crowd to collect. So far we have got a few defendants in that picture and nine policemen. Now it appears to me recognizable that there are several other persons there who are, obviously, reporters or photographers.

THE COURT: And what if they are? Aren't they from the public who collected because of what happened there?

MR. SCHIFFER: Yes, your Honor, no more than the police are. I mean--the police and the reporters and the press are not part of a crowd.

THE COURT: It may be that they were attracted by the activity, without the presence of which they would not have been attracted; therefore, they became part of the crowd that collected.

MR. SCHIFFER: I hope your Honor is not suggesting that every time that the--

THE COURT: I am talking about reporters. Reporters--

MR. SCHIFFER: (Continuing) every time reporters come up to something, there is automatically disorderly conduct?

THE COURT: No, that is not my

interpretation. I merely said they constitute part of the people who collected.

MR. SCHIFFER: Well, may it please the Court, there appear to be nothing but reporters, photographers, and policemen in that picture.

THE COURT: If you--

MR. SCHIFFER: Excuse me, your Honor?

THE COURT: I will withdraw my ruling and permit you to further question him along those lines.

MR. SCHIFFER: Thank you, your Honor.

BY MR. SCHIFFER:

Q Now, would you identify--

THE COURT: If you know.

Q Tell me if you can recognize any of the people in the picture?

A I do not recognize anyone. I see one man with a pencil and pad in his hand.

BY THE COURT:

Q Do you recognize any of those people to be reporters?

A No, I do not.

BY MR. SCHIFFER:

Q Do you recognize any of them to be photographers?

A No.

Q How about the man carrying a camera?

A I don't recognize him.

Q But you see that he is a photographer?

A Same as the man--

MR. McGINLEY: Objection.

THE COURT: Just a man carrying a camera. That is the way the Court looks at it.

BY MR. SCHIFFER:

Q How many other people were there, Patrolman Dillingham, on the right or west side of the truck that you remember at the time that photograph was taken?

A You mean--towards the curbline?

Q That is right?

A I would say, approximately, fifteen or twenty.

BY THE COURT:

Q That would be in between the right side of the truck and the barricade? A Approximately, about fifteen or twenty.

Q That is shown on the picture; is that correct? A No, it is not on the picture. He said, "How many do you say was there without the picture?"

Q Then the question is how many people, other than defendants, were on the right side of the truck, regardless of whether they are shown in the picture or not, and what was the total number of people?

A It would have to be made right, rear, off to the side, on the curb, to the sidewalk there, on the curbline there.

THE COURT: Let us divide it up, right and left of the truck--whether they are rear or front--let us divide it.

BY MR. SCHIFFER:

Q Officer, the rear of the truck; that is looking towards the front of the truck, looking into the truck from behind, on the right side of the truck?

A Approximately, fifteen.

Q About fifteen people?

A Yes.

Q That would be between the truck and the barricades? A No, no, you said rear of the truck.

Q I said--between that right side of the truck and the barricades?

THE COURT: Well, let us split the truck right down in the middle and disregard whether it is rear or front and just say--

THE WITNESS: The whole group, I said, was, approximately, thirty people to the rear of the truck.

THE COURT: You are not listening to me. Let us try to do it this way--

BY THE COURT:

Q Assuming that the truck is split right down the middle, how many people to the right of the truck or on the side and to the right of the truck?

A I did not see any to the right of the truck.

Q That was the portion in between the right of the truck to that portion in between the right side of the barricade?

A Yes, sir.

Q How many people?

A I didn't see any there.

MR. SCHIFFER: No people there.

BY MR. SCHIFFER:

Q How many people were behind the barricade--any? A I didn't see any behind the barricade.

Q The fifteen or twenty people to whom you referred, they were in a northerly direction behind the truck,--meaning--in a northerly direction on the sidewalk?

A That's right.

Q How large is the sidewalk at that point?

A How wide?

Q Yes.

A Approximately, ten, twelve feet.

MR. SCHIFFER: If your Honor pleases, I measured the sidewalk.

THE COURT: That is his testimony. If you want to ask him, "Are you sure it isn't ten feet or twelve feet?"

BY MR. SCHIFFER:

Q Are you sure it isn't wider than that at that particular point?

THE COURT: You might suggest the number to him.

BY MR. SCHIFFER:

Q May I suggest to you that-- A I said, approximately, ten, twelve feet.

Q (Continuing) it was twenty-five feet in one direction and fifteen feet at another point--

A I figure it ten, twelve feet; ten, twelve feet at that particular point.

Q That would be the northern corner of that sidewalk there?

A That's right.

Q Were there any police cars at the scene at the time this photograph, People's exhibit 3, was taken?

A I saw one to the rear of the truck.

Q One. Was it a regular marked police car?

A White top, green car; yes, sir.

Q Were there any unmarked police cars?

A I didn't notice any.

Q That was the only police car that you saw?

A That I saw; that is the only one I saw.

Q That is the only one you saw. Now, to the south of the point shown in this picture, Park Row is a two-way street, is it not, with a center strip divider?

A Yes.

Q Would you please count the number of vehicles in that photograph, which are southbound, and tell me how many there are (indicating)?

THE COURT: The exhibit speaks for itself.

A One, two, three, four, I see.

Q And northbound?

A I see--two, three.

Q Now, did this incident have any effect whatsoever on northbound traffic on Park Row?

A Northbound, no.

Q It is a fact that there were only two or three vehicles in that two-block area shown here, indicating that traffic was, perhaps, rather light at that time?

THE COURT: Ask him, "Was the traffic light?"

A I would say it was moderate.

Q Moderate. Would you call two or three vehicles, northbound, over a two-block area, moderate?

A Moderate, yes.

Q That would be moderate, two or three vehicles in a two-block distance? A You asked for--traffic would be moderate.

MR. McGINLEY: I object to this. The question of traffic is a different thing from the traffic depicted in the picture at the time this picture was taken.

THE COURT: Sustained.

May I suggest we recess for lunch at this time?

----000----

(There was a recess taen at this time

until two p. m., for the afternoon session.)

---ooo---

THIS IS TO CERTIFY that the foregoing is a true and correct transcript of all of the stenographic minutes taken by me in the above cases, from 12:30 p. m. until recess for lunch, on September 3, 1963, taken in the case of THE PEOPLE OF THE STATE OF NEW YORK, on the complaint of PATROLMAN GEORGE DILLINGHAM, et al. vs. GEORGE CANNON, et alios, before Hon. George S. Rader, Judge, in Part LC-1, of the Criminal Court of the City of New York, County of New York.

Jacob Klein

Jacob Klein, C.S.R.
Official Court Reporter

COURT REPORTER'S MINUTES

Criminal Court of the City of New York

Part 1-C-1, County of New York

THE PEOPLE OF THE STATE OF NEW YORK

vs.

[illegible], [illegible], [illegible], [illegible], [illegible], [illegible], [illegible], and [illegible],

Defendants

BEFORE

Hon. [illegible]

Judge.

(9:30 a. m.) September 4, 19 63

CHARGE Disorderly Conduct and Violation of the Vehicle and Traffic Law

TRIAL (or) HEARING Trial

APPEARANCES:

For the People [illegible], Esq., Assistant District Attorney

For the Defense [illegible], Esq., and [illegible], Esq.

WITNESS	DIRECT	CROSS	RE-DIRECT	RE-CROSS
Witness for the defense				
Joel Freedman	[illegible]			

Jacob Klein, C. S. R.
Official Court Reporter

CRIMINAL COURT OF THE CITY OF NEW YORK

PART 1-C-1 : COUNTY OF NEW YORK

x-----------------------------------x

THE PEOPLE OF THE STATE OF NEW YORK

on the complaint of

PATROLMAN GEORGE DILLINGHAM

vs.

JON SCHAEFER, ANTONIO VASQUEZ,
STEPHEN GORDON and ALEXANDER BOYER

x-----------------------------------x

Docket numbers
C-14230, C-14231,
C-14232, and
C-14233.

Violation of Section
722, sub. 2 and 3,
of the Penal Law
(Disorderly Conduct)

CRIMINAL COURT OF THE CITY OF NEW YORK

PART 1-C-1 : COUNTY OF NEW YORK

x-----------------------------------x

THE PEOPLE OF THE STATE OF NEW YORK

on the complaint of

PATROLMAN WALTER BROWN

vs.

ELEUTERIO GONZALEZ, JEFFERY KALB,
and JOEL FREEDMAN

x-----------------------------------x

Docket numbers
C-14235, C-14236,
and C-14237

Violation of Section
722, sub. 2 and 4,
of the Penal Law
(Disorderly Conduct)

CRIMINAL COURT OF THE CITY OF NEW YORK

PART 1-G1 ; COUNTY OF NEW YORK

x-----------------------------------x

THE PEOPLE OF THE STATE OF NEW YORK

vs.

GEORGE CANNON, ELEUTERIO GONZALEZ,
JEFFERY KALB, and JOEL FREEDMAN

x-----------------------------------x

Docket numbers
B-6296, B-6297
B-6298, and
B-6299, inc.

Violation of Section
1220 of the Vehicle
and Traffic Law

New York, N. Y., September 4, 1963

Before

HON. GEORGE S. RADER

Judge

Appearances:

HON. FRANK S. HOGAN, District Attorney, New York County, by PATRICK W. McGINLEY, ESQ., Assistant District Attorney, for the People.

GEORGE SCHIFFER, ESQ., 40 East 49th Street, New York 17, N. Y., for defendants George Cannon, Eleuteric Gonzalez, Jeffery Kalb, and Joel Freedman.

KENNETH KAPLAN, ESQ., 37 Wall Street, New York, N. Y., for defendants Alexander Boyer, Antonio Vasquez, Stephen Gordon, and Jon Schaefer.

Jacob Klein, C. S. R.
Official Court Reporter

COURT OFFICER MAX DIAMOND: Docket number C-14320, C-14231, C-14232, and C-14233--Jon Schaefer, Antonio Vasquez, Stephen Gordon, and Alexander Boyer--charged with disorderly conduct, subdivision 2 and 3.

Docket numbers C-14235, C-14236, and C-14237--Eleuterio Gonzalez, Jeffery Kalb, and Joel Freedman--charged with disorderly conduct, subdivision 2 and 4.

Docket numbers B-6296, B-6297, B-6298, and B-6299--George Cannon, Eleuterio Gonzalez, Jeffery Kalb, and Joel Freedman--charged with violation of Section 1220 of the Vehicle and Traffic Law.

Continued trial.

(The trial was resumed.)

THE COURT: I have been waiting patiently. I have been advised that one of the defendants is not present.

MR. SCHIFFER: I must apologize for Schaefer's lateness. I know he left the house timely to get here. There must be some problem in the subway or some such thing. I can only apologize for his lateness.

THE COURT: Of course, it would be silly for us just to be sitting around, hoping that he will be here. I don't know whether we can proceed without him.

MR. McGINLEY: Without the defendant?

THE COURT: Without the defendant. Technically, we can, this being a misdemeanor and two offenses.

Whose client is he? Do you represent him or Mr. Kaplan?

MR. SCHIFFER: Mr. Kaplan.

MR. KAPLAN: Yes, sir, I do. I think we can proceed without Mr. Schaefer, since your Honor says this is a misdemeanor and two offenses. I don't think there are any misdemeanors--only offenses ~~[illegible]~~ and a traffic violation.

THE COURT: There is a blue back on that and it should be on a white back. This is an offense; that is correct; three offenses.

MR. KAPLAN: Three offenses--a traffic violation.

THE COURT: Two offenses and a traffic violation. There is no reason why we can't proceed without him, if the attorney representing him will stipulate that the cases may proceed---

MR. KAPLAN: Yes, your Honor.

THE COURT: (Continuing) without the attendance of defendant Schaefer, with the same force and effect as if he were present?

MR. KAPLAN: Yes, your Honor, I so stipulate.

THE COURT: Are we ready to proceed?

MR. McGINLEY: Yes, your Honor, that is the People's case against all the defendants.

MR. KAPLAN: May it please the Court, on behalf of--

THE COURT: Mr. Kaplan, you represent Boyer, Gordon, Schaefer, and Vasquez?

MR. KAPLAN: Yes, your Honor.

On behalf of those defendants, I respectfully move to dismiss the charges and discharge the defendants, on the ground that the People have failed to prove a prima facie case of dis. con. 2 and 3.

I won't be repetitious and redundant. Your Honor has the full record before him, assiduously taking notes.

The ground for the dismissal, of course, lies in the fact that the prerequisite intent to commit the offense of dis. con. 2 and 3 were not shown beyond a reasonable doubt.

I might further merely add this, your Honor, that, arguendo, the intent was shown here, but to the contrary is the fact-situation, with the requisite crowd, which is required by Subdivision 2, was not proven beyond a reasonable. doubt.

MR. SCHIFFER: Would it be appropriate for my motion to be made at this point, so that my argument can be heard--

MR. KAPLAN: Would your Honor hear

Mr. Schiffer, so that his argument, of course, can, in part, pertain to my defendants, too.

THE COURT: Of course.

MR. KAPLAN: Thank you.

MR. SCHIFFER: On behalf of the defendants Freedman, Cannon, Gonzalez, and Kalb, I move to dismiss the charge of violation of Section 1220 of the Vehicle and Traffic Law, and the charges of disorderly conduct, on the ground that the People have failed to make a prima facie case.

I should like to address myself, first your Honor, to Section 1220.

THE COURT: Proceed.

MR. SCHIFFER: Now, your Honor, Section 1220 of the Vehicle and Traffic Law, adopted, I believe, in 1958, known as the "Litterbug Law" and states that "No person shall throw, dump, deposit or place or cause to be thrown, dumped, deposited or placed, upon any highway or within the limits of the right-of-way of such highway, or upon private lands adjacent thereto, any refuse, trash, garbage, rubbish, litter, or any nauseous or offensive matter."

Now, your Honor, that section appears to me to require proof of several elements. First, as the litterbug statute, it must deal with an intent to abandon property of the kind described upon a highway or such other place. If there is no intent to abandon shown or if the circumstances, under which the acts alleged occur, are open to the inference that it was not the intent of the defendants to abandon the property, then there can be no offense.

Secondly, as it is stated in the Trial Memorandum , the portion of the statute dealing with lands adjacent to the highway has heretofore been found to be--held to be--excuse me--unconstitutionally vague.

In this case, the evidence clearly shows--

THE COURT: With regard to the constitutionality of the section, the word "highway"--

MR. SCHIFFER: Your Honor, I cite the case in my Trial Memorandum, at page 13, your

Honor. It is People against Campobello, 193 New York Supp. (2d) 266.

THE COURT: All right.

MR. SCHIFFER: Now, that case would appear to be sound law and there is no reason why this Court should not follow it. The points said specifically applies to the facts in this case and it is as follows: The proof is that whatever was unloaded from the truck was unloaded to the right side of the truck. Now, the right side of the truck is shown by the photograph adduced. Pardon me, your Honor. The refuse or material--rubbish--which was unloaded from the truck is shown by People's exhibit 2 to have been deposited in the area separated by a series of white lines lying in front of a barrier marked, "Police Line. Do not cross," and a group of, approximately, five signs, reading: "No thoroughfare. Official cars only." The area in which the unloading took place, consequently, is not a part of any highway. It would, therefore, follow that the offense is not a traffic in fraction; has not been established upon that ground.

However, your Honor, there is no evidence in the record as of this moment that the defendants or any of them had an opportunity to remove any of the material which they unloaded.

The evidence of Patrolman Brown was that he and others entered the truck and the evidence of People's exhibit 3 is that, upon being removed from the truck,--which, incidentally, shows an officer still within the truck,--the defendants were surrounded by some eleven police officers in that one portion of the scene alone.

The evidence, further, is that Mr. Cannon was, from the moment that the truck stopped, in conversation and in talk with Officer Houston, who testifies he did not arrest him; and, further, Officer Brown testified that Mr. Cannon was not arrested until a considerable time later, when he was apparently voluntarily at the 5th Precinct Station.

We consequently have a situation wherein the basic elements of the statute have not been proved.

We further have in the testimony, on cross-examination of Officer Brown, specific evidence of the intent of the defendants not to abandon this property in the place where it remained, and that is in his report of the conversation between Mr. Cannon and himself and another police officer.

As to the disorderly conduct, the evidence of Officer Dillingham quite clearly negates any disorderly conduct, in that he testified, in effect, that there was no crowd; that there were people passing by; that on that sidewalk one could expect people to pass by, and that they did not stop to gather.

The point that must be made here is that the pickets were in that location before the truck arrived. The truck was directed to the spot marked "X" on Defendants' exhibit A, by a police officer, who so testified, and, consequently,--excuse me, your Honor,--and the police officers, obviously, were there at the scene and must have been at the scene, either long before or a little before the arrival of the truck, to have arrived in such numbers, in the light of the absence of police cars,--except for one, concerning which there is testimony which indicates that the area was in the control of the police at that time.

We have further testimony that there were reporters and television trucks, but, as I pointed out yesterday, your Honor, the presence of reporters on a scene, first of all, cannot, in my mind, be a ground of causing a crowd to gether, and, secondly, there is no way of determining, based on the record, whether the reporters were present because of the previous demonstration, or whether they came because of the truck.

The main point on this phase of the case is that there is no evidence that the truck would have gone to that spot but for the directions of Patrolman Houston.

In addition, your Honor, it is plain on the face of things that the charge against defendant Gordon is based solely on his identification as being part of the group depicted in the photograph, People's exhibit 3, where an image alleged to be him is marked with the letter "G". Now, if your Honor pleases--

(Mr. Schiffer handed photograph referred to to the Court Officer Diamond, to be handed to the Court.)

MR. SCHIFFER: (Continuing) consideration of that photograph and examination of the defendant's head, and, particularly, the rear of his head, shows that the hair quality is entirely different; that there is no indentation in the center of the rear of his head, such as would result from a long parting; that there is absolutely no evidence of any part on the side of his head, and that the hair quality is entirely different--the hair in the pic ture being largely smooth, while Mr. Gordon's hair is extremely curly. The significance of this is based on People's Exhibit 3. It is quite clear that there is no case whatsoever against Mr. Gordon.

As to the other elements of disorderly conduct, it remains to be said that the unloading of the truck in the place designated by the police cannot constitute disorderly conduct. The question of intent, again, become important, and, again, intent has not been shown to be the cause of a crowd to gather. There has been shown no crowd. The intent to cause a breach of the peace has not been shown, and has, in fact, been negated by the People's own witnesses.

There were no circumstances under which a breach of the peace might occur, as is shown by the large number of policemen who were obviously, on the scene, regardless of the limited memories of the officers, who testified they could not remember seeing their fellow officers. The point is that eleven of them appear in that very photograph, and, certainly, in that photograph there is no activity by any of these defendants which could be construed as tending to a breach of the peace. In fact, they are standing close together, arms linked, obviously peacefully, and surrounded by policemen.

Now, I ask your Honor to note the case of Edwards vs. South Carolina, decided in this term by the United States Supreme Court, and reported at volume 83 Supreme Court Reporter, page 680.

This case, your Honor,--and I want to make it clear,--is not cited as part of a justification defense. To my mind there is no justification defense in this case.

I cite the case because of its description of the circumstances occurring during a petition for a redress of grievance, which this United States Supreme Court held not to constitute disorderly conduct. What the Court actually said was that even if, as it would have to assume, the conduct might be held by South Carolina to be disorderly conduct as a matter of law,---as a matter of constitutional law that South Carolina law could not be constitutional.

In that case, your Honor--

THE COURT: Is that the case where they intruded upon property?

MR. SCHIFFER: Your Honor, 187 people went upon the State House grounds. The case is very similar to this case.

THE COURT: Is that the case where they intruded upon property? They were on certain private grounds?

MR. SCHIFFER: No, your Honor, they went upon the State House grounds--they went upon the State House grounds--and they, in that situation, there were 187 of them. They sang and they did many of the things which these defendants are charged with doing, and the Court specifically held that such conduct was justified, despite the fact that the defendants refused to remove themselves upon the orders of the constituted authorities; and, your Honor, one of the bases of that holding was that there was no threat to public disorder, because there was an adequate police force and adequate law enforcement officers, and there was no evidence that any bystanders who did gather were in violent movement or were approaching themselves, in any way, with threatened violence.

Now, your Honor, there are cases which we have cited in the Trial Memorandum, involving intrusion upon private property. Those cases are to my mind a fortiori to this case, in that, clearly, the intrusion upon private property is a greater variance from the normal course of conduct than parking a truck in a place where a police officer directs one to park; particularly, when that place is part of City Hall park.

THE COURT: May I say that in this case,--I am not too sure of it; I am just trying to remember what I read some time ago,--I believe in those cases the charge was disorderly conduct arising from an intrusion upon property, and, I believe, the Court found that there was an intrusion upon property, but not disorderly conduct, and unfortunately for the prosecution in that case down there, there was no intrusion upon property laws in that State; therefore, they had to charge them with disorderly conduct, which they could not prove. I believe those are--

MR. SCHIFFER: The Peterson line of cases involves charges of trespass under local trespass statutes. The Edwards case involves a disorderly conduct prosecution under the disorderly conduct statute. There are various cases and we have cited the leading case decided in the last term of the Court.

Your Honor, these cases as a group make it clear that the exact terms of the statute and the exact nature of the offense is not the decisive criteria. The question is to balance the conduct against what the defendants in these cases were doing,--whether, in fact, some circumstances that justified them.

We do not cite them as a point of justification. We simply cite the Edwards case to show clearly that this particular conduct within the lines of the Edwards case could not be deemed disorderly conduct. The other cases are a fotiori cases arising under trespass or other local statutes.

Now, as to the defendant Cannon, your

Honor, it would appear that his arrest was improper, since it occurred under a statute repealed some five years earlier, several hours after the incident, and in another place, where he was then voluntarily. I think that, as a matter of law, he is entitled to a dismissal without more.

Gordon is entitled to dismissal, because there is absolutely no case against him.

MR. KAPLAN: Excuse me, your Honor.

(Mr, Kaplan spoke with Mr. Schiffer at this point off the record.)

MR. SCHIFFER: It would appear, further, your Honor, that Mr. Brown--Officer Brown--who made the arrest in the Station House, by his own testimony, has removed himself considerably from Mr. Cannon, who was in the company of Officer Houston at all times after the truck stopped, so that I do not understand how there are any circumstances under which Officer Brown could have properly arrested Mr. Cannon.

As to the other defendants, your Honor, there is considerable confusion as to the People's evidence, and, particularly, in respect to what these defendants are charged with doing in relation to the particular statutes.

We have the transcript ready, your Honor, if your Honor would care to review it in part, in addition to your Honor's notes.

This point will be quite clear: there seems to be no testimony concermning the defendants Gonzalez and Vasquez, other than, one, that they appeared, at some point, to have been on the truck; two, that the defendant Vasquez was in the circle of police shown in People's exhibit 3.

As to Mr. Freedman, the best that can be said is that he was seen from a distance by Officer Brown unloading something from the truck. Now, Officer Brown used the term "throw", and I think the record is quite clear that when he used that term, he was using a term of art. He described what the people were doing and it didn't involve throwing in any ordinary sense of the word. Material from the truck was taken to the side of the truck and that material was then allowed to fall to the sidewalk. This is not throwing and it is in no sense inconsistent with evidence to pick it up and cartit away.

THE COURT: I wish you would be more specific when you say to the Court it was allowed to fall to the sidewalk. How did it get out of the bed of the truck and over the side, when you say it was allowed to--

MR. SCHIFFER: I say, your Honor, that the material was loaded to the high side of the truck, according to the policeman's own testimony, and then dropped over the side.

Now, this is--

THE COURT: Now, you used the word "drop". It did not drop all by itself. Somebody gave it impetus, to make it drop, did they not? So that when you say they are guilty of only permitting it to fall, I do not think you are being consistent with the evidence, and

I would like you to be. I respect your argument and I am trying to give it a lot of attention. I also expect that it be within the confines of the testimony that has been adduced, and that it not be given a distorted interpretation.

MR. SCHIFFER: Your Honor, I am not intending in any sense to distort it. Officer Brown made it clear as to what he saw the people inside the truck doing and then his very definition of the word throwing is not in the ordinary sense. Your Honor asked him yourself, "Do you mean like throwing a baseball?"

THE COURT: I asked him that and it appeared to me--from his testimony I concluded---that they were lifting it over the sides and allowing it to be given enough impetus to make sure it fell over the side.

MR. SCHIFFER: Your Honor, this is not inconsistent with what I am trying to say. There is a difference between that and throwing, and, your Honor, the point is what they did was not inconsistent with the intention of removing the stuff from the place where it had fallen. This is the whole point.

The evidence further shows that Mr. Schaefer was attempting toopen the side door of the truck and that he was pulled away from that side door. Now, if Mr. Schaefer had been permitted to open the side door, perhaps that is how the material would have been unloaded, instead of being given an impetus over the side.

The point is that, again, we have a situation in which the police were in full control, and, in a sense, were directing whatever happened. Also, your Honor, the time interval between the arrival of the truck and the arrest of--or the arrest of all the defendants except Cannon, and Cannon accompanying Mr. Houston to the police car, was very, very brief--just a few minutes--this all moved very, very fast.

It is also clear from the evidence that the police had been anticipating something and that they had been cautioned that it was going to be a garbage dump. Now, your Honor, there is no testimony that there was any garbage on the truck. On the contrary, the officers have described bedsprings; they have described mattresses; they have described cushions; tney have described other materiak of a dry character, not, in itself, disgusting, and not constituting garbage in any sense. There is nothing inconsistent between that stuff being on the truck and the defendants' intent to carry it where they said they were going to carry it; that is, to the Municipal Building.

We further, your Honor, beg leave to point out that the evidence is that a police car watched the loading of this truck and made no objection, so that if there was any illicit carting of garbage, the arrest or the apprehension should have come when they watched them load. But they didn't do that. They telephoned or radioed ahead and had Officer Houston stop the truck and start writing a ticket, allegedly for hauling garbage without--excuse me--carting garbage, without a permit at a point where that Officer has testified he could not see and did not know the contents of the truck.

Now, this means, your Honor, that it was the police who had put an interpretation on information which came to them about a demonstration to occur--a demonstration in future--and the police determined to interfere with it, for the best of motives, but, nevertheless, to interfere with it, to climb on it as soon as that truck appeared; to direct that truck into a predetermined place, and then to stop whatever the defendants might have in mind.

This, your Honor, I submit, means that there can be no showing under this record that the defendants intended to commit any offense charged.

MR. McGINLEY: Your Honor, many of Counsel's arguments are so patently specious and also Counsel's distortion of the evidence that we heard in great detail, that we don't need to recall it. I would like to make a few points, however.

Disorderly conduct is a relatively simple statute and there are many cases in New York covering all its ramifications. In addition to the particular elements described in every one of the subdivisions, there is also required an intent to provoke a breach of the peace or a situation in which a breach of the peace may result. A breach of the peace has been defined in People vs. Perry, a landmark case, reported in 265 New York,, 362, at page 364, as (quote) "Disturbance of public order by an act of violence or by any act likely to produce violence, or which, by causing consternation and alarm, disturbs the peace and quiet of the community" (unquote).

I think the defendants, as wellas everyone in his life, is presumed to intend the consequences of their deliberate acts. Here they loaded a truck with many things--with bedsprings, with mattresses, with wooden boxes, with pieces of metal, with garbage and other rubbish, and, in addition, they put a live rat in a cage and attached that to the truck,--more to call attention to their purpose, I suppose. At any rate, with that truck loaded as it was, they proceeded along; saw police at many intersections. Now, with police expecting their arrival, but with impunity, with deliberateness and with the intention to proceed along their course, dedicated to dumping garbage in City Hall.

It is interesting to note when they got to the area of City Hall they were not stopped by the police. Patrolman Houston testified yesterday standing at the time, observing the truck come to a complete halt in front of City Hall Plaza, on Park Row. It was then that he directed the truck to a right lane, further to keep it out of traffic.

Immediately at the point that the truck was pulled over, the garbage was thrown,--not slipped off--not slid off,--but thrown from the truck by three specific defendants actually seen throwing that; namely, Freedman, Kalb, and Gonzalez. Cannon, of course, was the driver of this truck. He had told the officers, when questioned, that he was going to the Municipal Building and then to City Hall. He knew full well the purpose of this demonstration; he knew full well the course it would lead and the results which it would have.

The section of the law under which the defendants are also accused, Section 1220 of the Vehicle and Traffic Law, is also fairly easy to ascertain. All that is required is the throwing into a street or public roadway. We have had a few battles over semantics as to what we call the area of where the garbage was thrown, as to the definition of a public street or roadway; the fact is that garbage was thrown from a truck and landed not only in the area where the yellow lines run diagonally with one another, it also fell into the roadway, blocking traffic--both vehicular traffic and pedestrian traffic.

It was interesting to note, too,

there was no traffic--no cars--in front of the truck, thereby disclaiming and disallowing any defense that the truck stopped deliberately and simply because there were cars in front of it or because it wished to make a turn. The officers were definite in testifying that there were no cars or trucks in the left-hand lane and that they had never seen this particular truck--the truck driven by the defendant--indicate to make a left-hand turn in any way, either by signal, directional signal, or manual signal.

Counsel has brought to the Court's attention the Campobello case in his brief and his mention that Section 1220 was never intended to deal with rubbish disposal. Nobody is calling this particular case one of rubbish disposal. To give the defendants the benefit of the doubt; I don't think they ever intended that. The evidence is plain that this was not a rubbish disposal place. This was not the city dump. This was City Hall.

In addition to that, Counsel has

also cited to the Court the case of Edwards vs. South Carolina. This was, indeed, a case in which defendants gathered at the State House in South Carolina, but the case in no way resembles the case at bar. There are sections of its opinion, as for instance, at page 681, where the Court states there was no obstruction to pedestrian or vehicular traffic within the State House grounds; no vehicle was prevented from entering or leaving the horseshoe area. Further down, page 682, there was no impairment of pedestrian traffic.

Then the police went and told these people, as they stood quietly and peacefully on the State House grounds that they would be arrested if they did not disperse in fifteen minutes. In the State of South Carolina the law is not applied equally as it is in New York. Perhaps, if the defendants in that case had been white, they would have been asked to leave the place. When a law is applied unequally, it is applied unconstitutionally, and therefore the defendants in that case had a right, if you will, to disobey the orders of the police. The case also states a breach of the peace is a violation of public order.

Here we have defendants being told by police officers not to dump garbage. We have them, then, after the garbage is dumped out on the street and in the roadway in City Hall, clasping arms, singing and chanting and making other statements. They were told twice, and the police used great deference and great restraint in entreating them to please move on or they would be arrested. They completely ignored that command. Again the command was given and they ignored it again.

Their only purpose was to call attention to certain alleged situations in Eldridge Street and other places, but they deliberately, knowingly, and wilfully disobeyed the orders of the police and forced them to arrest them, which is, after all, what they wanted done in the beginning.

As to the defendants in the picture and that defendant as pointed out, particularly, defendant Gordon, the police are definite and certain in stating that they had seen defendant Gordon, as well as others, with hands clasped, singing, chanting, and, in addition, to pick him out of the picture. Perhaps defendant doesn't look entirely as he does in real life as he did in the picture, but, nevertheless, the police officer made a definite identification of him, as well as of the other defendants.

Cannon, of course, was driving the truck. Without a driver, the truck would never have navigated at all; would never have gotten to City Hall, and perhaps, this whole thing would have been avoided, although to give the defendants the benefit, they would have been resourceful enough to get another driver.
At any rate, Cannon was an accessory. He is charged with acting in concert and charged with violation of Section 1220 of the Vehicle and Traffic Law. The People have not charged Cannon

with violation of disorderly conduct.

We respectfully submit to the Court that the deliberate, wilful, and intentional disobeying of the police officer's orders showed a definite contempt for law or conduct which tended to a breach of the peace, and, therefore that the People did make out a prima facie case against all the defendants.

THE COURT: With respect to Cannon, my notes indicate no affirmative act on the part of Cannon.

MR. McGINLEY: Except driving the truck, your Honor.

THE COURT: Except driving the truck.

MR. McGINLEY: That's true.

THE COURT: Now, the evidence also shows that he came to a halt,--whether it was at City Hall Park or it was for the purposes of making a left turn, or otherwise,--but I think the evidence is clear that he came to a halt, and the evidence is also very clear that from the point where he came to a halt, hethereafter obeyed the direction of Officer--what is his name--Houston?

MR. McGINLEY: Yes, your Honor.

THE COURT: (Continuing) who clearly testified that he waved him on--motioned him on--to come over to the point where the truck was finally stopped.

I have no evidence whatsoever to indicate intent upon the part of--intent or knowledge on the part of--Cannon that this garbage or debris or springs, mattresses, or whatever you want to call it, was to be all thrown into the street,--not merely based upon conjecture.

It is true he was with the truck and had the truck and in charge of driving the truck at the time it started out from the point of inception, but that, in itself, doesn't satisfy the Court that there existed, at that particular time, an understanding or a conspiracy to dump this material at the point where it was dumped.

MR. McGINLEY: However, your Honor, he did state to the police officer when stopped, where he was going; he did stop the truck of his own accord at a particular place before the police officer ever directed him over. Although we have no direct proof that he knew what was going to happen, we have circumstantial. He is being charged with acting in concert with the other defendants; that the act of one should be the act of all.

THE COURT: As I look upon his statement that he was going to City Hall or to the Municipal Building, that going to City Hall or going to the Municipal Building--that, in itself, did not violate any law. There was no violation of law until the dumping, or with the possibility of carting this refuse without a license, for which Cannon did receive a summons, I understand?

MR. McGINLEY: Yes, your Honor.

THE COURT: But under the charges

here, there was nothing illegal in his set intention of driving this truck to City Hall or to the Municipal Building, and when he did get to Park Row, there was nothing illegal until such time as when the refuse was dumped. That is when the illegality started in my opinion. Until that time there was nothing in what Cannon said or what Cannon did that constituted an illegality.

MR. McGINLEY: Your Honor, isn't this the crime of the driver of a getaway car in a robbery? He is not in the store committing the robbery. He is merely waiting outside in the automobile, and all the people can ever say is that he was seen with the perpetrators of the robbery; that they drove up there together and that they intended to, circumstantially, to commit such an act.

Here, the same way, Cannon was in this truck from the inception--from the time it proceeded to go that afternoon until the time it finally got to City Hall--he was the driver all the way. I think it would be asking too much to believe that Cannon was an innocent bystander or someone that the defendants--the other defendants--prevailed upon to drive the truck, because they were in need of a driver.

MR. SCHIFFER: Oh, your Honor I don't think it would be too much to believe. I think it is much--

THE COURT: Please, contain yourself. I do not think it makes for orderly process of law to engage in such conduct.

MR. SCHIFFER: I am sorry.

MR. McGINLEY: I think it is clear, inferentially, that Cannon was in on this dumping act from its inception; that he was part and parcel; that he was a necessary cog in the machine, and ended up dumping garbage in City Hall; that without him the act could not have been done, and that he did it wilfully and knowingly; and we respectfully suggest to your Honor that a prima facie case has been made out against Cannon. This is not a case beyond a reasonable doubt, as your Honor well knows.

THE COURT: I know.

MR. SCHIFFER: Your Honor, as a point of distinction with the robbery case, you must have well in mind that there was no offense--no proof in this record that any offense was contemplated--prior to the time that Cannon was in the control of Houston, and that's all there is to it. He is not responsible, no matter what anybody did after that--he is not responsible for it.

THE COURT: Anything further on either side?

MR. McGINLEY: Nothing further.

THE COURT: Both motions are denied.

MR. SCHIFFER: May it please the Court, may we have five minutes?

THE COURT: Yes, sure.

(There was a brief recess at this time, after which the trial was resumed.)

THE COURT: Are we ready, at this time,

to proceed, gentlemen?

MR. SCHIFFER: Your Honor, I call Joel Freedman.

JOEL FREEDMAN (one of the defendants) 145 Waverly Place, Borough of Manhattan, City of New York, called as a witness in his own behalf, having been first duly sworn, testified as follows:

COURT OFFICER MAX DIAMOND: Give your name?

THE WITNESS: Joel Freedman.

COURT OFFICER MAX DIAMOND: Where do you live?

THE WITNESS: 145 Waverly Place, New York City 14.

COURT OFFICER MAX DIAMOND: What is your business or occupation?

THE WITNESS: Student, New York University.

DIRECT EXAMINATION

BY MR. SCHIFFER:

Q Mr. Freedman, how old are you?

A Twenty.

Q In what year of N. Y. U. are you?

A Junior Year.

Q Do you have a major?

A Yes, English.

Q Have you ever been convicted of a crime?

A No.

Q Are you the Chairman of the N. Y. U.--

THE COURT: Will you keep your voice up, please?

MR. SCHIFFER: Excuse me, your Honor.

BY MR. SCHIFFER:

Q Are you Chairman of the N. Y. U. CORE Chapter?

A I am.

Q What does CORE stand for? A The Congress of Racial Equality.

Q Would you please examine the photograph, People's exhibit 3? Do you see Mr. Gordon in that picture (indicating)?

(The exhibit referred to was handed to the witness.)

A No, sir.

Q Can you identify the person whose image is marked with the letter "G" in that photograph, exhibit 3?

A Yes.

Q Will you tell us who that is, please?

A Stephen Koslof. I believe it is spelled K-o-s-l-o-f (spelled out).

Q To your knowledge was Mr. Gordon at any time between two and three o'clock on August 21, 1963 in the rear of the truck?

A No, sir.

Q Mr. Freedman, in your capacity as Chairman of the N. Y. U. CORE Chapter, did you commence an investigation of conditions in Eldridge Street?

A Yes, sir.

Q When did that investigation commence, approximately? A Approximately, February 15, 1963.

Q Would you please describe briefly the investigation.

MR. McGINLEY: Objection, your Honor.

THE COURT: Sustained.

BY MR. SCHIFFER:

Q Between February fifteenth and August twenty-first, Mr. Freedman, how many times were you in the 200 block of Eldridge Street?

MR. McGINLEY: Objection, your Honor.

THE COURT: Sustained.

BY MR. SCHIFFER:

Q Mr. Freedman, did you examine the buildings 203 to 215 Eldridge Street?

MR. McGINLEY: Objection, your Honor.

THE COURT: Sustained.

MR. SCHIFFER: Your Honor, I am trying to establish the intent of Mr. Freedman in this matter, and I believe that regardless of your Honor's ruling the other day, Mr. Freedman ought to be permitted to testify concerning his own conduct in relation to this matter. Will your Honor reconsider it in that light?

THE COURT: The ruling is the same, sir.

MR. SCHIFFER: Respectfully except, your Honor.

Your Honor, at this time I desire to make an offer of proof, if Mr. Freedman were permitted to testify, he would testify that during the period between February fifteenth, approximately, and August twenty-first, he and other members of the N. Y. U. CORE group visited the Eldridge Street buildings, known as 203 to 215 Eldridge Street on numerous occasions. They visited--he and they visited--each of those buildings and each unit in those buildings. They prepared and assisted the tenants in those buildings in preparing numerous complaints to the Building Department and to other city departments and to the Rent and Rehabilitation Commission, and in connection with these complaints, Mr. Freedman came in contact with Maximo Gonzalez, Rent Administrator for the relevant area and with officials of the Building Department.

If permitted to testify, Mr. Freedman would further say that the buildings contained such situations as large accumulations of rubbish, vermin infestation, including both rats and cockroaches in large numbers, warped and rotted floors, cracked and broken walls and ceilings; numerous plumbing defects; broken window frames; broken windows; windows permanently barred up, in violation of the Fire Regulations; such that in the event of fire, the occupants could not use those windows for escape; failure of a landlord to furnish hot water; failure of a landlord to furnish heat; front door which were not self-closing; accumulation of garbage in hallways; and numerous other such violations.

These violations were brought to the attention of the proper City authorities.

BY MR. SCHIFFER:

Q Mr. Freedman, on July 29, 1963, did you have a meeting with Deputy Commissioner Grabitz of the Building Department?

A I did.

MR. McGINLEY: Objection, your Honor.

THE COURT: Sustained.

MR. SCHIFFER: At this time, your Honor---

THE COURT: Why don't you include that in your offer of proof?

MR. SCHIFFER: That is what I was about to do.

At this time your Honor, I desire to offer proof, as follows: Mr. Freedman, if permitted to testify, would testify that he had a meeting with Commissioner Grebitz, and, in the course of that meeting, the situation of the condition of the Eldridge Street buildings was discussed, and there was further discussed the method, manner and means by which the N. Y. U. CORE group could cooperate with the Building Department in remedying these conditions.

That it was further discussed with the Building Department at this time the necessity of controlling in excess of eight hundred thousand dwelling units with some four hundred inspectors; that, in consequence, the Building Department desires to work with groups such as the N. Y. U. CORE and other civic-minded neighborhood groups, for the purpose of determining offenders of a nature such as the landlord of this building, Mr. Kaplowitz, and that Mr. Grebitz, in the course of that conversation, made it clear that such groups could render a valuable service by bringing the situation to public attention in various ways and by bringing specific complaints to the attention of the Department.

The offer of proof will also include the testimony of Deputy Commissioner Grebitz and Commissioner Birns, to the following effect, your Honor having previously ruled that their testimony would not be admissible.

MR. McGINLEY: Your Honor, I would interrupt at this time to offer an objection to all this offer of proof. This offer of proof is substantiallyy the same as Mr. Schiffer has made on many occasions to your Honor.

This is a Court of law and not a forum for real and imagined grievances. Time is short and there are other cases on the calendar. If Mr. Schiffer is allowed to make these lengthy offers of proof on matters on which your Honor has already ruled to be inadmissible--all patently inadmissible--I do not believe he should be allowed to do so.

MR. SCHIFFER: Your Honor, I do not know what the District Attorney fears. I don't really understand why there is such--

THE COURT: Counselor, may I say this? I understand the District Attorney, and, in certain respects, I approve his attitude to some of the proof that has been offered.

Of course, this Court will not permit this Courtroom to be used as a propoganda sounding-board for certain ideals, no matter how justified they may be. This is a Court of Law, and in this Court of Law we decide innocence and guilt, and we try to conduct it in circumstances which is becoming to the dignity of such important deliberations. We cannot allow it to wander into channels which others may desire or which may serve the purposes of others. This Court feels that it must conduct this trial so it serves the purpose of justice and nothing else; and I can understand how the District Attorney feels, that there may be in this conduct and this offer of proof an attempt to do just that.

However, I do feel that any defendant who has a defense has the right to offer certain proof which he deems to be relevant to his innocence, and, under those circumstances, I am obliged to take the offer of proof.

Now, it seems that this is the same offer of proof which was offered and rejected by the Court previously in the course of this trial. However, in order that we may not do any injustice to the defendants, you may have some additional items to offer in the way of proof of innocence. I am going to permit you to continue, but please don't repeat, however, the offer to produce certain individuals, which the Court has already rejected.

MR. SCHIFFER: Your Honor, I am fully cognizant of the fact that this is a Court, annd I respect it deeply. I would not want to use this Court as a forum.

Evidence of the kind I am offering has

been admitted in other cases, including a case in this County, involving a related issue. This was the case of In the Matter of Charlene Skipworth, your Honor, 180 New York Supplement (2d) 852. Evidence of this character was admitted in a variety of cases dealing with issues of this general nature. It is only in this group of cases, your Honor, dealingxwith demonstrations this summer that there has been a complete exclusion of evidence of the circumstances under which the acts of the defendants were done.

Now, I want to emphasize, your Honor, that I want to be as brief as I can be, but I do desire,—and I believe this is relevant evidence I am offering,--that it is material on the issues before the Court, and the offer must be made to protect the rights of my clients, and I would not want your Honor to feel that I am, in any sense taking advantage of this Court as a forum. Nothing could be further from my mind.

THE COURT: Proceed, Counselor.

MR. SCHIFFER: The testimony of Commissioners Birns and Grebitz would also be that after--

MR. McGINLEY: We are not dealing with the testimony of Commissioner Grebitz--Deputy Commissioner Grebitz--and Birns, because that offer, with respect to their testimony, was made and rejected previously.

MR. SCHIFFER: I think the record was clear, your Honor, that at that time, actually, that was somewhat premature, since we were in the middle of the People's case.

THE COURT: All right, proceed.

MR. SCHIFFER: I am sorry, your Honor. I do not want to be repetitious, but I think we did reserve it to this point.

THE COURT: It may have been taken out of its proper context.

MR. SCHIFFER: The testimony of Commissioner Birns and Grebitz would further show that after a demonstration by a CORE group in the Bedford-Stuyvesant area of

Brooklyn, a concerted effort was made by various City departments to remedy the condition of in excess of a thousand buildings. These buildings were found to have in excess of sixteen thousand violations. Forty-three of them were placed in receivership, as the law provides.

With particular referennce to the conversation between Commissioner Grebitz and Mr. Freedman on July twenty-ninth, Mr. Grebitz would confirm that he requested Mr. Greedman to bring specific complaints and specific evidence to the attention of the Department. Mr. Grebitz would further testify and Commissioner Birns would further testify that they desired to be in continual contact with these and other CORE groups, and regard these groups as beneficial; and, in fact, have made arrangements, so that in emergencies and in situations where it is warranted, there would be a procedure for rapid Department action.

They would further testify that immediately following this incident, action was taken to remove substantial quantities of debris from 203 to 215 Eldridge Street and the immediate surroundings, and that other remedial matters were being instituted.

The testimony would further be that a comparatively small group--

THE COURT: Mr. Schiffer, you are falling into error at this point.

MR. SCHIFFER: I am sorry, your Honor.

THE COURT: You are telling the Court that the proposed witnesses would testify; that their testimony would be such-and-such, when, in fact, you have no assurance as to what they would testify to. I think that your offer of testimony should be merely an offer, and not a statement as to what they would testify to, because they don't know and I don't know whether they would testify in that fashion or to those facts or deny such facts; and, of course, I expect the District Attorney, will, upon the record, place a denial of the fact that these witnesses would testify to the truth of the statements that you make.

MR. McGINLEY: Your Honor, I was going to wait until Counsel had finished and then state that on the record.

THE COURT: I think your statement should be an offer of proof through these witnesses and not that these witnesses would actually make such statements.

MR. SCHIFFER: I gratefully accept your Honor's amendment. I would not, of course, make any statement in this Court had I not first spoken to the gentlemen in question, to determine what they might say and what they regard to be the truth.

THE COURT: Well, confine yourself to a statement that you offer to prove, and not that they would testify.

MR. SCHIFFER: Yes, your Honor. May

we deem what I have said previously as amended to that form?

THE COURT: All right.

MR. SCHIFFER: If permitted to testify, Mr. Freedman would further testify that Mr. Kaplowitz is the owner of the buildings 203 to 215 Eldridge Street, through various corporations, which Mr. Freedman would identify; and we would offer to prove, by Mr. Freedman, that he has corresponded on various occasions with Mr. Kaplowitz, has met with Mr. Kaplowitz, has received letters from Mr. Kaplowitz's attorneys; all of them tending to confirm the condition of the buildings and the necessity for remedial action; some of them tending to show or constituting an acknowledgment of existing violations of law in the buildings.

That constitutes the offer of proof.

THE COURT: The offer of proof is rejected, of course, as being inconsistent with the ruling previously made.

Anything further from this witness?

MR. SCHIFFER: Oh, yes, your Honor.

BY MR. SCHIFFER:

Q Mr. Freedman, in your capacity as Chairman of the N. Y. U. Chapter of CORE, on the evening of August 20, 1963, did you telephone Mr. George Cannon?

A I did.

Q Did you know Mr. Cannon personally prior to that time?

A I did not.

Q Would you state the substance of your conversation with Mr. Cannon on that occasion, Mr. Freedman?

A Yes. I asked Mr. Cannon if he would be able to drive a truck for us the following day.

Q What did Mr. Cannon say?

A He said that he thought he would be able to do it.

to

Q Did he ask you for what purpose he was to drive the truck?

MR. McGINLEY: Your Honor, I object

to Counsel leading. He is asking this witness to give a conversation he had.

THE COURT: Sustained.

MR. SCHIFFER: All right.

BY MR. SCHIFFER:

Q Please just state the substance of the conversation.

THE COURT: After he finishes his statement, if you feel that he is not giving the entire story, then you may query him further. Since you had asked him for a narrative statement, delete that.

BY THE COURT:

Q Give us everything that you did.

A I asked Mr. Cannon if he would drive a truck the next day, and he said that--

MR. McGINLEY: Excuse me. Would your Honor direct the witness to speak louder? I can't hear him.

THE COURT: Please speak up, so that we can all hear you.

THE WITNESS: Excuse me.

THE COURT: We have gotten as far as you asked him to drive a truck on the following day. He said--?

A He said he would be able to do so. Then he wanted to know if there was anydanger of arrest or violations, and that--and wanted to know, also--if we had planned to break any laws, and, of course, I stated that we had no such intentions; that we had planned a peaceful, quiet demonstration, and that there would be no danger to anyone.

MR. McGINLEY: Your Honor, I object to that part of the conversation and ask that it be stricken out, on two grounds: that it is a self-serving statement and also brings this witness's state of mind into the picture.

THE COURT: I will take it as a conversation between the two defendants and give it the credibility and weight which I deemm it to be entitled to.

A And then Mr. Cannon said that we could meet him. We made arrangements to meet the following morning, at, approximately, eleven-thirty, a quarter to twelve.

BY MR. SCHIFFER:

Q Was that the end of your conversation?

A This was the end of our conversation.

Q In the course of the conversation, Mr. Freedman, did Mr. Cannon ask you what you intended to do?

MR. McGINLEY: Objection, your Honor.

THE COURT: Overruled. Same ruling.

A Yes.

Q Did you tell him what you intended to do?

A I did.

MR. McGINLEY: Your Honor, without belaboring the point, I just wish to make one point to the Court on myx objection. Now Counsel is seeking to do indirectly that which he cannot do directly.

THE COURT: I understand, sir, and at such time as the evidence is offered,-- we don't know what he is going to say,--

but if he does say anything along the lines which would appear to indirectly introduce testimony that has already been rejected, then you can make the proper objection.

BY MR. SCHIFFER:

Q Did you?

A Yes.

Q Will you please answer the question?

A I told him that we had planned to--

BY THE COURT:

Q Was that after you met the next morning?

A No, this is the telephone conversation of the previous night. That we had planned to take evidence, in the form of rubbish, which had--which was--in the buildings on Eldridge Street, from 203 through 215, and rubbish and refuse which was on the street, and behind, also, building number 205 on Eldridge Street, and take it, load it on to a truck and have the truck--drive the truck--down to the Municipal Building and unload the truck, and take this evidence to Commissioner Birns of the Department of Building and Housing and Deputy Commissioner Grebitz.

BY THE COURT:

Q Did you say you told him you were to unload the truck at the Municipal Building and take this truckload of refuse to Deputy Commissioner Grebitz and Commissioner Birmns? A That is correct. This he agreed upon.

BY MR. SCHIFFER:

Q Were you to unload the entire truckload, or didn't that come up?

A At the--

MR. McGINLEY: Objection to what he would try to do.

THE COURT: Sustained.

BY MR. SCHIFFER:

Q On the morning of August 21, 1963, did you go in an automobile--

THE COURT: Don't lead.

MR. SCHIFFER: I am sorry. You are right.

THE COURT: Let him tell it. Ask him on the morning of--what did he do.

BY MR. SCHIFFER:

Q On the morning of August 21, 1963--

MR. SCHIFFER: I am just trying to save time.

BY MR. SCHIFFER:

Q On the morning of August 21, 1963, where did you go?

A On that morning I went down to Eldridge Street. I had been picked up by a member of CORE in a Vdkswagon, and along with other members of CORE, we went down to the Municipal Building and looked the area around the Municipal Building over, to try and find which would be the most convenient area to unload in an area which would not hinder traffic in any way, or pedestrian traffic.

MR. McGINLEY: Your Honor, I object and ask to have all that stricken as to what the intention of the defendant was, which is irrelevant on this particular charge. What he intended to do and what was actually done are two different things. He is not being tried for his intentions. His intentions are, therefore, irrelevant.

THE COURT: I will take it. Objection overruled.

BY MR. SCHIFFER:

Q Did you select a parking place for the truck?

A We did.

BY THE COURT:

Q You say you picked a place where the truck could be unloaded--

A That's correct.

Q (Continuing) at the Municipal Building?

BY MR. SCHIFFER:

Q Did you select a parking place?

A Yes.

Q Please examine defendants' exhibit A, the Map. Do you see the Municipal Building there?

A Yes, I do.

Q Would you be kind enough, please, to designate on the Map the place where you planned to park?

MR. McGINLEY: Objection, your Honor.

THE COURT: I will take it. Overruled.

A Yes.

Q Please mark the place? A With what mark?

MR. SCHIFFER: Excuse me, your Honor. What have we got?

THE COURT: Use this red pencil (indicating).

(The pencil referred to was handed to the witness.)

THE WITNESS: Thank you.

MR. SCHIFFER: Why don't we mark it with a triangle?

THE COURT: Mark it with the letter "T" or "UT" for unloading truck.

BY MR. SCHIFFER:

Q UT.

A Is this the sidewalk area here (indicating)?

A Approximately.

(The witness indicated on Map.)

Q Did you, Mr. Freedman, select--

THE COURT: The Map is exhibit

number what?

MR. SCHIFFER: Defendant's exhibit A, your Honor.

BY MR. SCHIFFER:

Q Did you select any alternative parking place for the truck?

A I did not.

Q Were you present, Mr. Freedman, when the truck was loaded?

A Yes, sir.

Q Will you describe, please, what was loaded on to the truck, or such of the items as you may remember?

A There were parts of orange crates, old brooms, mop handles, some large cans, scraps of metal, old chairs, parts of tables, springs, mattresses, and general assorted pieces of wood and metal, generally speaking.

Q At approximately what time did the truck depart Eldridge Street?

A The truck made--

Q When did the truck depart Eldridge Street?

A The first time?

THE COURT: Perhaps there was more than one departure and one return to Eldridge Street, so that you might say when did it depart from Eldridge Street, from where it immediately thereafter proceeded along Houston, then up to Lafayette. Is that the time you want?

MR. SCHIFFER: Your Honor, the first departure.

THE COURT: You want the first departure.

BY MR. SCHIFFER:

Q The first departure of the truck from Eldridge Street, approximately?

A About 1:10, I would say.

Q Was there anything loaded on to the truck after 1:10?

A No.

Q There has been reference made in the testimony to a rat in a cage. Was there a rat in a cage on or about the truck?

A Yes.

Q Where did that rat come from, if you know? A The rat came from building number 207 Eldridge Street, Apartment number 9.

Q Was the rat--

THE COURT: No, just one moment.

BY THE COURT:

Q Do youknow that of your own knowledge? Did you see it come from there, or did someone tell you it was taken from there? Did you catch this rat yourself?

A I did not catch the rat myself.

THE COURT: All right, we will strike that.

BY THE COURT:

Q Did you see it caught? A No, I did not. At the time--

Q Did you ever see it in the buildings described?

A I didn't.

THE COURT: Strike it from the evidence.

BY MR. SCHIFFER:

Q Now, at one-ten the truck, you said,

departed Eldridge Street. What did it do, as far as you know? A As far as I know it went around the block.

Q Did it attempt to park again? A You mean--on Eldridge Street?

Q On Eldridge Street? A I believe it did, yes.

Q Did it park again on Eldridge Street?

A I don't know.

Q Where were you at that time?

A At that time I was on the street, talking to reporters and TV camera men.

Q Did you notice any policemen or police cars at any time prior to one-ten--

A Yes.

Q (Continuing) on Eldridge Street?

A Yes.

Q How many police cars did you notice?

A One.

Q Was that police car parked?

A Yes.

Q Where was it parked, approximately?

A Approximately, in front of or near to a building number 205 on Eldridge Street.

Q It was parked on the same side, next to these buildings; is that right?

A Yes.

Q Did you see any police cars cruising on Eldridge Street?

A Yes.

Q How many police cars did you see cruising?

A At least one.

Q Was it a regular marked police car or--

A Yes.

Q It was. Did you see any unmarked vehicles with policemen in them?

A Not at that time.

Q Were there any foot patrolmen or was there a foot patrolman?

A Yes.

Q Did you recognize him?

A No.

Q When did you board the truck? A At what time?

Q At what time did you board the truck?

A If I may clarify this for one minute?

THE COURT: I think you may be confusing the witness. He may have operated the truck a number of times. I think it is germane to the issue at this time--if, in fact, all this is germane to the issue at all--is when did he board the truck immediately prior to its driving off for City Hall.

BY MR. SCHIFFER:

Q When did you board the truck immediately prior to departure for the Municipal Building? A Two--nought--excuse me--

Q Approximately?

A Approximately, 2:13.

Q Where was the truck at the time you boarded it?

A It was on Allen Street.

Q Was there a police car near the truck on Allen Street at that time?

MR. McGINLEY: Objection, your Honor, irrelevant.

THE COURT: It might serve some purpose

that defendant seeks to develop. I will permit him.

A There were two police cars.

Q Were they both regular marked police cars?

A One was unmarked.

Q How did you know it was a police car?

A I saw a policeman in it. I noticed a two-way telephone, and the policemen had uniforms on, and they were conversing in the car.

Q Did you speak to any of the policemen?

A Yes, I did.

Q This policeman in which car?

A The policeman was not in the car when I spoke to him.

Q Do you recognize the policeman? Was he one of the policemen who testified here? A I don't know.

Q What did you say to him?

MR. McGINLEY: Objection, your Honor.

THE COURT: Sustained.

BY MR. SCHIFFER:

Q Will you give us the substance of the

conversation?

MR. McGINLEY: Objection, your Honor.

THE COURT: Sustained, unless you can identify the officer to whom you spoke.

BY MR. SCHIFFER:

Q Did you see a sergeant sitting here?

MR. McGINLEY: Your Honor, I object now to Counsel leading the witness.

THE COURT: Sustained.

MR. McGINLEY: The witness has testified he cannot identify the officer.

BY MR. SCHIFFER:

Q Would you recognize him if you saw him again?

MR. McGINLEY: Objection, your Honor. The witness has answered the question. He does not know who the officer is and can't identify him. Counsel will now try to suggest many initials, but this Officer was--

THE COURT: I do believe that the

witness has exhausted his memory and that his attorney may put leading questions to prod his memory to a slight extent, but not to suggest an answer.

MR. McGINLEY: However, your Honor, this is a college junior who just took the stand. He has been on the stand some twenty minutes. I respectfully suggest his memory, however slight or great it may be, could never be exhausted at this point.

THE COURT: It might be exhausted as to the events that took place in August.

MR. SCHIFFER: Your Honor, I might say this, if I may. All of those policemen could be readily identified by the People, who must have identified all of them as part of their preparation of this case. We have not had the slightest bit of cooperation in identifying people for us.

THE COURT: You don't expect the District Attorney's Office to act as your counsel.

MR. McGINLEY: Especially when Counsel doesn't tell us whom he wishes. Anyone he wishes has been here and Counsel has spoken to them and even excused them. Sergeant Levine was here at his request and he excused him.

MR. SCHIFFER: Only that the people who have been here aren't the people. We have served subpoenas without any assistance from the District Attorney's Office. Has not produced anyone. His identification could be readily available to Counsel. The District Attorney's Office must know exactly who that police officer was.

THE COURT: Let us not quibble about the situation. The fact remains that--

MR. SCHIFFER: Your Honor, there was--

THE COURT: (Continuing) you are attempting to identify someone and you seem to be unsuccessful.

We will now take a break.

(There was a brief recess taken at this time, after which the trial was resumed.)

MR. SCHIFFER: (To the reporter) Would you please read back the last question?

THE COURT: Yes.

(The last question was read by the reporter.)

BY MR. SCHIFFER:

Q Would you recognize him if you saw him again?

MR. McGINLEY: Was the objection to that question sustained?

THE COURT: Objection was made to the offer of the evidence of a conversation had between him and some person whom he doesn't know, somebody he hasn't been able to identify more particularly, except to say he looked like a policeman. That was objected to and the objection is sustained.

MR. SCHIFFER: Would your Honor accept

it as sufficient identification--excuse me--may I approach the Bench?

THE COURT: Well, you have this difficulty: unless you can identify him with the conversation, how is the District Attorney going to cross-examine or offer rebuttal testimony to that which may be stated to have been part of the conversation?

MR. SCHIFFER: Well, your Honor, the testimony is that there were two police cars--four policeman. Now, the previous testimony of Patrolman Brown placed him and his partner at that point, and the occupants of the other police car are known to the District Attorney and the one that--

THE COURT: That is a presumption.

MR. McGINLEY: That is very presumptious and I take violent exception to it.

MR. SCHIFFER: Your Honor, we may be moved to violent exception.

THE COURT: Let us not be carried

away--a colorful word.

MR. SCHIFFER: I would suggest, your Honor, that the policeman to whom the witness spoke must have been one of the four who have been identified.

THE COURT: Counsel, you are trying your case. You can't place the burden on the People to accept the possibility.

MR. SCHIFFER: All right. I respectfully except, your Honor.

BY MR. SCHIFFER:

Q Now, Mr. Freedman, how long after you arrived to board the truck at 2:13 did the truck leave Allen Street?

A Ten minutes.

BY THE COURT:

Q Would you say the truck left Allen Street about a quarter after two?

A That's correct.

MR. SCHIFFER: Excuse me, your Honor.

BY MR. SCHIFFER:

Q You arrived aboard the truck at 2:13?

A 2:13 the truck pulled out.

Q 2:13 the truck pulled out, so that you arrived ten minutes earlier than that to board the truck?

A Approximately, five after two.

Q Approximately, five after two, you arrived aboard. At, approximately, 2:15, the truck departed Allen Street?

A Right.

Q Did you see the officers that you had previously placed there entering their cars?

A Yes.

Q Did the marked police car follow the truck when it pulled away?

BY THE COURT:

Q If you know--

A Yes, sir.

Q (Continuing) if you don't know you are not to attempt to guess.

A Yes.

BY MR. SCHIFFER:

Q Did the unmarked police car follow the truck?

A Yes.

Q When it pulled away, which police car followed the truck most closely? Which one was immediately behind the truck? A The unmarked police car.

Q What color was that car? A It was a silver-gray police car.

Q Did you see any other unmarked silver-gray police cars?

A No.

Q So that if we refer hereafter to the silver-gray police car, it will be that. Now, the truck, by various streets, reached the intersection of Houston and Lafayette Street; is that correct?

A That's correct.

Q What did the truck do after it reached that intersection?

A The truck made--the truck waited--for traffic to pass and made a left-hand turn on to Lafayette, heading south?

Q At that point was the silver-gray police car following it?

A Yes.

Q At that point was the other police car still following it?

A I don't know.

Q As the truck proceeded south on Lafayette Street did it pass the intersection of Pearl Street, which is marked on defendant's exhibit A?

A Yes, it did.

THE COURT: May I see Exhibit A?

(Defendants' exhibit A referred to was handed to the Court.)

THE COURT: All right, sir, proceed.

BY MR. SCHIFFER:

Q Were there policemen--did you see any policemen--at that intersection?

A Yes, I did.

Q How many?

A There were many--from three to five. I know that from my side, there were policemen lining the whole route on Lafayette Street.

Q All the way up to Houston Street?

A No, no, beginning around the Pearl Street area.

Q Beginning, approximately, at Pearl Street?

A Yes, and, possibly, a few blocks before that.

Q But, in any event, we have been talking about Pearl Street?

A Pearl Street, yes.

Q There were three to five policemen at that intersection; is that correct?

A That's right.

Q Would you say what you mean--there were policemen lining both sides of the street? Do you mean they were shoulder to shoulder?

A No, they were spaced, approximately, three to five policemen before the block, spaced from twenty feet to thirty feet apart.

Q Now, the next intersection after Pearl, the same thing is true; is that correct?

A That's right.

THE COURT: Don't lead.

MR. SCHIFFER: I am sorry, your Honor.

BY MR. SCHIFFER:

Q To your recollection, is there a traffic light at the corner of Reade and Lafayette Street?

MR. McGINLEY: Objection, your Honor. I would like to make--I will make--one standing objection to all--to all of the last several questions and to include this one--so I will object to each one at a time, and I will object to this, on the ground that it is leading.

THE COURT: Sustained. Don't lead the witness. Let him tell us his story in his own way.

THE WITNESS: Could I add?

THE COURT: Do not add anything. Be responsive to only the question that is asked of you.

BY MR. SCHIFFER:

Q Would you describe the street and surroundings and persons that you saw as you were proceeding south on Lafayette Street, from Pearl to the intersection of Lafayette and Centre Streets? A If I could borrow the Map (indicating)?

THE COURT: Here you are (indicating).

(The Map referred to was handed to the witness.)

THE WITNESS: Thank you, your Honor.

A Will you repeat the question, please?

(The reporter read as follows:)

"Q Would you describe the street and surroundings and persons that you saw as you were proceeding south on Lafayette Street, from Pearl to the intersection of Lafayette and Centre Street?"

A I saw at that point many police officers, stationed from twenty to thirty--possibly, forty--feet apart. A few of them in clusters of two--two officers together--aside from the usual pedestrian traffic.

Q Would you describe in the same terms; that is, would you describe the street and the conditions and the personnel that you observed between the intersection of Lafayette and Centre Street and the intersection of Centre and Chambers Street?

A At the Municipal Building, approaching Lafayette, the police officers became more frequent and more numerous. At the Municipal Building there were many police officers and--

Q Could you tell us how many "many" is?

BY THE COURT:

Q An estimate?

A An estimate?

Q Yes?

A More than fourteen.

Q And less than how many?

A Fourteen--well--

Q More than fourteen might mean a thousand.

A Yes. More than fourteen and less than thirty.

BY MR. SCHIFFER:

Q At the Municipal Building or-- A At the Municipal Building, yes.

Q Now, did any of these officers address--did you hear any of these officers say--anything as the truck proceeded south from Pearl Street to Chambers Street?

A I know that--

Q What?

A (Continuing) at one of these streets we were waved through a red light by a police officer.

MR. McGINLEY: Objection, your Honor, as not responsive to the question.

BY MR. SCHIFFER:

Q I asked you, did you--

A Excuse me?

Q (Continuing) hear any of these policemen say anything?

A No.

Q Did you see any of these policemen do anything?

A Either, I believe it was, at the intersection of Reade and Lafayette that we were waved through a red light by a policeman.

MR. McGINLEY: Your Honor, objection to that, as a conclusion on the part of the witness.

THE COURT: Sustained.

MR. SCHIFFER: Your Honor, he was on the truck and he observed.

BY MR. SCHIFFER:

Q Did you observe a red light?

A Yes, I did.

Q Did you see a policeman--

MR. McGINLEY: I object to Counsel leading.

MR. SCHIFFER: Well--

THE COURT: Let us have this over with.

BY THE COURT:

Q As you approached Reade--Lafayette, approaching Reade Street--did you see an officer?

A I did.

Q What, if anything, did he do?

A He gestured with his arms, indicating that we should continue.

THE COURT: Strike out "indicating".

BY THE COURT:

Q He gestured with his arms in what fashion?

A With a forward motion.

Q Was there a traffic signal at Lafayette and Reade there?

A Yes.

Q And at that moment when you say the officer motioned, what was the color of the traffic signal?

A It was red.

THE COURT: Now, proceed.

BY MR. SCHIFFER:

Q When you reached the intersection of Lafayette and Chambers Street, did you see one of the officers there doing anything?

A Yes.

Q What did this officer do?

A He made a gesturing motion forward--a motion outward from the Municipal Building--while standing in the Reade area of Lafayette Street.

Q Did you observe a traffic signal at that point?

A No.

Q Now, after passing this officer that you have just described, did you notice other police officers on what we might call the southerly portion of the Municipal Building; that is, south of Chambers Street?

A Yes.

Q Approximately, how many did you observe there? A More than seven and less than fifteen.

Q Did any of those officers say anything that you heard?

A No.

Q Did any of those officers do anything that you observed? A Yes, one of them--this is one of them--was standing in the street area--Lafayette Street area--and gestured us away from the Municipal Building.

Q Would you be kind enough to mark his position (indicating)?

MR. SCHIFFER: Your Honor, perhaps he should use that red pencil (indicating).

(The pencil referred to was handed to the witness.)

A What shall I use that for?

Q The question was, was he in the roadway or on that sidewalk?

A He was on the roadway.

Q He was on the roadway. Will you just mark wherever you saw him? A Excuse me. This line (indicating on Map) what does this indicate? Is that the roadway?

Q Excuse me.

MR. SCHIFFER: It doesn't indicate anything.

THE WITNESS: What shall I mark it with?

MR. SCHIFFER: Mark it with the letter "T", perhaps?

THE COURT: We have "T".

MR. SCHIFFER: May we use "1"?

THE COURT: "1" with a circle around it.

BY MR. SCHIFFER:

Q Mark "1" with a circle around it where you saw him standing in the roadway?

THE WITNESS: (The witness indicated.)

THE COURT: All right.

BY MR. SCHIFFER:

Q Did the truck then continue southward?

A It did.

Q Did you observe any traffic from the left?

A Could you clarify that, please?

Q All right. On the defendants' exhibit A, before you passed the point where you have marked with a "1", the truck continued in a southerly direction; is that correct?

A That's correct.

Q At the point or near the point marked with an "X" in a box, or, let us say--

THE COURT: Mark it number "2" in a circle.

BY MR. SCHIFFER:

Q Between this "X" and this "P" which are marked on the Map, did you observe any traffic on the left of the truck?

A I did.

Q Would you describe that traffic?

A Passenger vehicles and the silver-gray police car.

Q Did you observe any traffic coming from the curved roadway--from the Bridge underpass?

A Yes.

Q What traffic did you observe coming from that left side?

A Passenger vehicles.

BY THE COURT:

Q From where? Where did you see passenger vehicles coming from?

A From this particular road that filters into Park Row (indicating).

Q Are you sure of that? A Yes. Excuse me. There is a left turn over here, and I am trying to (indicating)--

MR. SCHIFFER: It is not marked on there (indicating).

THE WITNESS: There is a center line on Park Row.

BY THE COURT:

Q Are you indicating that you saw traffic coming?

A Coming into--

Q Coming off the Bridge?

A Yes.

Q From here (indicating)? A I didn't see it coming off the Bridge.

Q You saw traffic coming down here (indicating)?

A Yes.

Q You are certain of that? A I am certain of that, yes.

BY MR. SCHIFFER:

Q You also saw traffic to the left of the truck here (indicating)?

A That's correct.

THE COURT: All right. Indicating the east side of Park Row where it joins Centre Street.

BY MR. SCHIFFER:

Q Now, at or about the point marked "P" on that Map, did the truck slow down and stop?

MR. McGINLEY: Objection, your Honor, to Counsel leading.

THE COURT: Sustained.

BY MR. SCHIFFER:

Q What happened? Would you describe the progress of the truck from Chambers Street southward?

A Yes. The truck continued at a moderate pace from Chambers Street southward, I would say, ranging about twenty-five miles per hour, and the traffic was moderate, and at this--at the point where the Bridge traffic comes off into Centre Street--the traffic was slightly heavier, and the truck slowed down to fifteen miles an hour--twenty miles per hour--but at no time did the truck stop.

Q What happened then or would you just continue?

A Yes. The silver-gray police car was behind us at times--tried to pull left of the truck. The truck was to the--trying to--

MR. McGINLEY: Objection, your Honor, to what it was trying to do.

THE COURT: Objection sustained.

A The truck was slightly--now the road is divided--has sort of a center line in Park Row--and the left-hand part of the truck was--would be--three to five feet over that line, towards the left of Park Row. In other words, there was a sign which said, to the effect, left lane traffic must make a left turn, and there were cars in this area trying to make left turns, and the truck was in this area, also, apparently--

Q The truck was--

THE COURT: Let him finish, please. Don't interrupt him.

A (Continuing) to my knowledge the truck was more to the left-hand side of the road and trying to make a left-hand turn.

BY THE COURT:

Q Was there a vehicle of any kind in between the left side of the truck and the left curb?

A There were some. There was a lane of cars.

Q So, therefore, you were in that left lane; is that correct? I am trying to reconstruct--

A We were partially in the left lane.

Q If there was a line of cars in the left lane--

A The line in the left lane, frequently, at the intersection, where cars turn left, doubles up, and occasionally clash, so that the left lane can be double, in other words.

Q Please try and follow me. I know I am not making myself very clear, but please bear with me. I am trying to determine now where your vehicle was as it approached this sign. Now, I believe you said you were to the right of a line of cars, which was between your left and the left curb; is that correct? I, therefore, conclude that you were not in the lane which said--in which the sign related to said--that all trucks--

I am trying to reconstruct your testimony--the sign said that all trucks in the left lane must turn left. From your description of where your car was, or your truck was, it would seem to the Court that the truck was not in this left-turn lane. Now, if I am wrong about that, please correct me?

A Yes, I would say that the truck was, because traffic in that lane had lined up. The truck was attempting--part of the truck--

Q I am not speaking about--

A (Continuing) if there was a center line, your Honor--

Q Mr. Witness, I am not now speaking of what maneuvers the truck engaged in to accomplish any set purpose that the driver might have had in mind. I am now attempting to establish the position of the truck. Now, as I understand it,--and, again, I must say to you if I am wrong, please correct me,--that you were not in the lane which was required, according to the sign, to make a left turn?

A That's correct.

Q You were to the right--immediately to the right--of that line of cars; is that correct?

MR. SCHIFFER: Your Honor, excuse me a minute. The witness testified that partially the truck was in the left lane and partially it wasn't.

THE WITNESS: The truck was partially in the left lane. Part of the truck was straddling the left lane.

THE COURT: All right, proceed.

MR. SCHIFFER: May I approach the Bench, your Honor?

THE COURT: Yes.

(Mr. Schiffer and Mr. McGinley approached the Bench for a brief period, after which the trial was resumed.)

BY MR. SCHIFFER:

Q Now, at the point, Mr. Freedman, that the truck had reached that you have described, which point is, approximately, near thh letter "P" which is marked here (indicating) what happened--or just continue telling us what happened further on?

A The truck, at that point had been more in the--more to the left of the road--than to the right of the road, and approaching the City Hall Plaza, there were many, many--there were many--policemen.

Q Could you, again, give us an estimate of what "many" means? A More than fifteen; less than thirty.

Q Please continue.

A Just below the Plaza, I noticed the demonstrators marching with picket signs. I noticed pedestrians walking in the normal course of business whatever.

Q Mr. Freedman, would you mind staying with the progress of the truck at this point?

A Yes. The truck then, quite suddenly, slowed down just before the Plaza, and turned in--made a significant right-hand turn--and turned into the Plaza, facing a southerly direction, The silver-gray police car had just prior to this pulled up and backed behind the truck. It pulled up a few feet to the left of the truck and then back again, because of the traffic in the left lane, and the truck slowed down at the

City Hall Plaza. There were--

BY THE COURT:

Q When you say the truck slowed down--

A Yes, it slowed down.

Q (Continuing) where? At what street was it? You have the streets (indicating).

A It did not slow down at any street. There are no streets. This is on Centre Street, but right at the--

Q Let us go back to the point where you were when you say there was a left lane of cars and your truck was partially in it.

A This was in this general area, right here (indicating).

Q Were you back of the sign? Where is the sign which says that all trucks in the left lane must turn left?

A There is Park Row (indicating). There is a divider, which I do not believe is indicated on this (indicating).

MR. SCHIFFER: The record is, your Honor, that the break is--

THE COURT: I understand.

THE WITNESS: The sign is a few feet before the break.

BY THE COURT:

Q You were talking about a situation where there was a left lane of cars?

A That is correct.

Q So there was a lane of cars to your left, controlled by a sign which said, "Cars in the left lane must turn left"?

A That's right.

Q And you were a little to the right; that part of the truck was partially in that lane. Now, where was that precisely? Where was your truck when that happened?

A When I first noticed the line?

Q Yes? A Right about in this area, your Honor (indicating).

THE COURT: Indicating the area just south of the--

THE WITNESS: Of the subway.

THE COURT: (Continuing) just south

of the subway entrance.

THE WITNESS: And the traffic--the left lane traffic--was slightly heavier.

BY THE COURT:

Q Where was the sign that you speak of?

A The sign is--well, the break is--here (indicating) and the sign is approximately here (indicating).

MR. SCHIFFER: Can we identify "here" and "here"?

BY MR. SCHIFFER:

Q Are you indicating--

BY THE COURT:

Q Where is the sign? A The sign, left--must turn left--

MR. McGINLEY: Your Honor, I object to Counsel pointing it out.

THE COURT: Let him do this himself.

MR. SCHIFFER: I am sorry. I thought he had already done it.

BY THE COURT:

Q Is it near Spruce Street?

A I would say directly at "O" on Park Row (indicating).

Q Park Row, at the intersection of Spruce Street?

A Spruce, yes, and the sign is--

Q Now, you say your vehicle was where when it was partially in that left lane? Indicate to me on the Map, so that I may describe the point?

A The point just below (indicating).

Q Just below the subway station?

A Yes.

Q Just south of the subway stations which are at the sidewalk, near City Hall Park. And then what happened?

A The truck continued slightly slower than before, because of the left lane traffic here (indicating) and--

THE COURT: Strike out "because of the left lane traffic."

BY THE COURT:

Q You were not driving this truck. You just saw that the truck went a little slower?

A That's right.

Q Then what happened?

A About fifteen to twenty feet before the break in the curb cut--before the curb cut.

Q In City Hall Park?

A In City Hall Plaza, the truck, quite suddenly, made a right-hand turn.

Q You mean--it veered to the right?

A Veered to the right.

BY MR. SCHIFFER:

Q Did it stop before making that veering motion?

A No, it did not.

Q You had mentioned a number of policemen standing near the curb cut. Did you observe any of them do anything?

A Some of the officers stepped out as if to approach the vehicle.

BY THE COURT:

Q Were you inside--

MR. McGINLEY: Objection, your Honor.

Q (Continuing) were you in the cab of the vehicle at the time?

A I was not.

Q You were in the truck body?

A That's correct.

Q Are you able to see what was happening at the front of the truck while you were in the truck body?

A That is correct.

Q Were you on the debris?

A Yes, I was standing on some of the debris. I was elevated--the top part of my body--above the side panel.

MR. McGINLEY: Your Honor, my objection was the statement that police officers stepped out as if to.

THE COURT: Strike out "as if to" and everything after that part.

BY MR. SCHIFFER:

Q How many police officers stepped out from the curb--from the sidewalk?

A About five.

Q Was this before the truck came to a halt or after? Please fix the time? A Yes. If I may have a minute?

THE COURT: Certainly.

A For the most part I would say it was a combination of one or two officers stepping out, and, possibly, all of the officers stepping out.

THE COURT: You don't know when you say "possibly". You are not helping the Court. The Court must know, in response to the question, how many of the officers stepped out, and what, if anything, they did.

BY MR. SCHIFFER:

Q The specific question was whether this stepping had occurred prior to the truck coming to a stop or after the truck came to a stop? A Prior to it coming to a stop.

Q Now, did one or more of the officers step out from the curb, if you remember?

A This was, in effect, this is a curb cut, and in this area, where the line of the curb (indicating)--

Q Excuse me. This is defendants' exhibit B (indicating).

(Defendants' exhibit B was handed to the witness.)

BY MR. SCHIFFER:

Q Now, the curb cut is the area that's marked with the white lines there (indicating). Would you please tell me, did the police officers--did you observe any police officers--step out from the white-lined area or from the curb at any edge of the white-lined area (indicating)?

A I did.

Q You did, at that time; that is, before the truck stopped?

A Yes, sir.

Q How many did you observe so stepping out?

A About five.

MR. McGINLEY: Your Honor, I suggest this answer is pure conjecture. Your Honor has asked the witness much previous to this how many officers were there and he testified he didn't know.

THE COURT: Now it is his best

estimate.

MR. SCHIFFER: He did testify there were a number of officers and he gave the number in that area which he did observe. The question was simply how many of them stepped out.

THE COURT: You needn't make any explanation. I think we have disposed of the matter.

BY MR. SCHIFFER:

Q Did any of the officers that you observed in that area say anything or did you hear them say anything?

A No.

Q After the truck came to a halt--take it from--excuse me. You testified up to the point where he came to a stop. Now, in terms of defendants' exhibit B, would you identify where the truck stopped?

THE COURT: I think he has already testified that he came to rest at the curb cut--at or about--the curb cut.

A The truck, observing the white line--the left-hand portion of these white lines--when the truck pulled in, it pulled in about four feet over the white lines. In other words, the right-hand portion of the truck covered, approximately, four feet of all the white line.

Q After the truck came to a stop, what did you do?

A I attempted, first, to--

MR. McGINLEY: Objection, your Honor, "attempted".

THE COURT: Strike out what he attempted.

BY MR. SCHIFFER:

Q After the truck stopped, please tell us--

BY THE COURT:

Q What did you do?

BY MR. SCHIFFER:

Q (Continuing) what you did?

A I stood.

Q For how long did you stand? A For about a minute.

Q Were there others in the truck with you?

A Yes.

Q Did they also stand?

A They did.

Q Did anyone leave the truck during that time?

A The first I noticed was that--

Q Did anyone leave the back of the truck?

A Yes. The back of the truck, at that particular moment, no. However--

Q Would you tell us, did any police officer say anything that you heard during this interval?

BY THE COURT:

Q How long was this interval--I would be interested to know--how long did you just stand in the body of the truck after it came to rest? A It was about a minute.

BY MR. SCHIFFER:

Q Did any police officer say anything to you?

A No.

Q After this interval of about a minute, what did you do?

A I, what did I do? Observed.

Q I asked you what you did?

A After an interval of a minute I began to unload the refuse from the truck over the side of the truck.

Q What, specifically, did you unload?

A There were--I unloaded--an old chair made of wood, a door, and part of springs.

Q How did you accomplish this?

A I lifted the material up to the side of the truck.

Q Which side was that? A The right side of the truck and slid it along the top of the truck side and let it drop.

Q How long did it take you to unload these items? A Four minutes, approximately.

Q At the end of that time did anyone enter the truck?

A Yes.

Q Who entered the truck?

THE COURT: I want you to be very careful about the use of words. He said it took four minutes to unload the truck--

BY THE COURT:

Q Is that right?

A That's right.

Q About four minutes? A About four minutes; yes, sir.

THE COURT: Then you stated, "At the end of that time," indicating by your question that nobody entered the truck until the four minutes had expired. Now don't do that.

MR. SCHIFFER: I am sorry, your Honor. The Court is entirely correct.

BY MR. SCHIFFER:

Q At any time during or immediately after the four minute period did anyone enter the truck?

A Two police officers to the rear of the truck that I noticed. I saw--

Q Where were you in the truck? A I was towards the rear of the truck--right-hand, rear, corner.

Q To avoid confusion--the rear of the truck--here is the photograph, People's exhibit 1 (indicating)--

(The photograph referred to,

People's exhibit 1, was handed to the witness.)

Q Is the rear of the truck that portion with the gate, or by the rear, do you mean--

BY THE COURT:

Q By looking at the rear of the truck, were you at the left, rear, or right, rear?

A The right, rear.

Q You were at the right, rear, near the drop gate?

A That's correct; about two feet from the drop gate and about two feet from the--or a foot and a half--from the right side.

Q Very good. Now, did I understand you to say it took about four minutes to unload the truck and no one--no officer or anybody else--came upon the truck until it ended? A The truck was not completely unloaded. I was able to continue to unload the truck. Two police officers pulled the gate back, grabbed me, and assisted me from the rear of the truck.

Q How long after you started to unload the truck did this incident take place when the officers first entered in; that is what I am trying to elicit?

A From the first time that I started unloading the truck?

Q Yes?

A It was, approximately, four minutes.

THE COURT: All right.

BY MR. SCHIFFER:

Q Did the officers say anything to you?

A They said to the effect--

MR. McGINLEY: Objection, your Honor.

A (Continuing) substantially--

THE COURT: (Tó the witness) Stop, please.

MR. McGINLEY: Here we have unknown people saying something to him. We don't know who they are.

THE COURT: Probably can be identified by--

BY THE COURT:

Q Do you know which officer it was? Any of the officers who testified here? A I don't know. There were many policemen there.

MR. SCHIFFER: Your Honor, it is easily within the ability of the District Attorney's Office--

THE COURT: There we come back to the same--same--problem, which has been laid to rest previously.

MR. SCHIFFER: Your Honor, if this is a search for the truth, I do not understand why the District Attorney can't make available information readily available to him. Very well.

BY THE COURT:

Q Well, let me put it this way: You say someone came up on the truck? Was this man wearing a uniform?

A He was wearing a policeman's uniform, with a policeman's badge, cap, gun, and so on.

BY MR. SCHIFFER:

Q There were two such?

A There were two such.

THE COURT: I will take the conversation and give it such weight as I think it is entitled to.

MR. McGINLEY: If I may know, in the interest of justice, after Counsel's trite statement was made a moment ago about in the interest of justice the District Attorney should give information, then I would like--

THE COURT: That presupposes that you have information and that you refused to cooperate, and I do not believe such to be the case. My experience is that the District Attorney's Office and all public authority has cooperated with the defense as much as is humanly possible.

MR. McGINLEY: Then, your Honor, are we to allow this conversation merely because of Counsel's inability to ascertain the identify of whom he speaks?

THE COURT: I am going to allow it in the interest of justice, because I feel there is a possibility that since there were so many officers present, that it would be impossible for this defendant to know more than it was an officer--somebody dressed like an officer. That doesn't preclude that it actually was an officer.

Somebody, dressed like an officer, said--and then I will accept the statement and give it the weight to which it is entitled.

MR. McGINLEY: Not to belabor the point, if your Honor pleases, if the witness is allowed to testify to a conversation had with some unknown officer, which is hearsay, the burden will then be on the People to try and locate the witness to cross-examine him on the particular point.

THE COURT: Depending upon the statement that's made. If you think it should be the kind that is damaging to the prosecution and one which, because of limitations of identification is impossible to come by, then I will expect that you will make a motion to strike it out.

MR. McGINLEY: Thank you, your Honor.

MR. SCHIFFER: Your Honor, the fact of the matter is that the District Attorney pressed this case for trial, as our Trial Memorandum shows; that the representation was made that the District Attorney's Office was fully ready, among other things. The fact of the matter is that a most elementary preparation of this case would involve, among other things, the identification of the policemen in the immediate area and who was where.

THE COURT: Now, Counselor, I think we are belaboring and cluttering the record with matters that are totally inconsequential, which merely repeat your point of view and your opinion. Whether it be right or wrong, I don't know, but it certainly isn't helpful to the Court or important to your client's cause, so let us get on with it.

MR. SCHIFFER: All right.

BY MR. SCHIFFER:

Q Will you please give us the substance of what the police officer stated to you?

A The police officers--they both made the statement to me--was substantially, "Get off the truck. Come with us."

Q What happened next?

A I was assisted off the truck and brought around to the rear, left, of the truck--actually, it was about two feet to the left of the truck--and rear of the truck. I was brought into a circle of policemen and I was still being held by one of the officers, and I was momentarily released--released his grasp--from my arm.

At that point, I noticed Mr. Schaefer, who was being held next to me, and Mr. Boyer.

BY THE COURT:

Q How many people were in the circle?

MR. SCHIFFER: Excuse me. "How many policemen?"

THE COURT: We haven't gotten to the

circle yet.

MR. SCHIFFER: Your Honor, he mentioned he was brought into a circle of policemen.

THE COURT: Circle of police.

BY MR. SCHIFFER:

Q How many policemen, approximately, were in this circular grouping?

A About twelve.

Q Thank you.

MR. SCHIFFER: Your Honor, would this be an appropriate time for the luncheon recess?

THE COURT: No, we have about seven minutes. You haven't come to any specific pause--significant pause--in his testimony. Let us continue.

MR. KAPLAN: Would your Honor give us just a moment, please?

THE COURT: Yes.

(There was a brief recess at this point, after which the trial was resumed.)

MR. SCHIFFER: No further questions,

your Honor.

THE COURT: Cross?

MR. McGINLEY: Yes, your Honor.

THE COURT: Now we have gotten to a definite pause.

COURT OFFICER MAX DIAMOND: Recess for lunch?

THE COURT: Yes, two o'clock.

COURT OFFICER MAX DIAMOND: The Court stands recessed until two p. m. Step out quietly.

(There was a recess taken until two p. m., for the afternoon session.)

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THIS IS TO CERTIFY that the above is a true and correct transcript of all of the stenographic minutes taken by me in the above cases.

Jacob Klein

JACOB KLEIN, C.S.R.
Official Court Reporter